

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53256; File No. SR-NASD-2006-013)

February 8, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Establish a Unified Pricing Schedule for NASD 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 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, II, and III below, which Items have been prepared by Nasdaq. On February 1, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)⁴ of the Act and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 ("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 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut and Inet Facilities ("Nasdaq Facilities"). Nasdaq states that it will implement the proposed rule change on February 1, 2006.

The text of the proposed rule change, as amended, is below. Proposed new language is underlined; proposed deletions are in [brackets].⁶

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7010. System Services

(a) – (b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit

NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) for Tape B securities, the transaction is executed through CAES, ITS₂ or Nasdaq's Brut or Inet Facilit[y]ies, and the member acts as liquidity provider (i.e., the member sells in response to a buy order or buys in response to a sell order) or (ii) for Tape A and Tape B securities, the transaction is not executed through CAES, ITS₂ or Nasdaq's Brut or Inet

⁶ 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) (File No. 10-131).

Facilit[y]ies, and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage. An NASD member may earn credits from the pools according to the member’s pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

(d) – (h) No change.

(i) Nasdaq Market Center, [and] Brut, and Inet [Facility]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, [and Nasdaq’s] Brut, and Inet [Facility] (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 Nasdaq [a national securities exchange]. 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.

[Order Entry]	
[Non-Directed Orders and Preferred Orders]	[No charge]

Order Execution	
[Non-Directed or Preferred] Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq <u>Facilities</u> [Market Center and/or Nasdaq's Brut Facility]:	
Charge to member entering order:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
[Greater than 10 million]	[\$0.0027 per share executed (but no more than \$108 per trade for trades in securities executed at \$1.00 or less per share)]
<u>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</u> [Greater than 2,000,000 but less than or equal to 10,000,000]	\$0.0028 per share executed [(but no more than \$112 per trade for trades in securities executed at \$1.00 or less per share)]
[2,000,000 or less] <u>Other members</u>	\$0.0030 per share executed

	[(but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share)]
Credit to member providing liquidity:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
<u>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</u> [Greater than 20 million]	\$0.0025 per share executed [(but no more than \$100 per trade for trades in securities executed at \$1.00 or less per share)]
[Greater than 2,000,000 but less than or equal to 20,000,000]	[\$0.0022 per share executed (but no more than \$88 per trade for trades in securities executed at \$1.00 or less per share)]
<u>Other members</u> [Less than or equal to 2,000,000]	\$0.0020 per share executed [(but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share)]
[Non-Directed or Preferred] 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 Market Center:	
Charge to member entering order:	
[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month:]	
<u>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</u> [500,000 or less]	\$0.001 per share executed (but no more than <u>\$10,000 per month</u>) [\$40 per trade for trades in securities executed at \$1.00 or less per share)]
<u>Other members</u> [500,001 or more]	\$0.001 per share executed [(but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share, and no more than \$10,000 per month)]
[Routed] Order[s] <u>Routing for Nasdaq-Listed Securities</u>	
Any order entered by a member that is routed outside of [both] the Nasdaq [Market Center and Nasdaq's Brut] Facilit[y]ies and that does not attempt to execute	<u>The greater of (i) \$0.004 per share executed or (ii) a pass-through of all applicable access</u>

<p>in <u>the Nasdaq['s Brut] Facilit[y]ies</u> prior to routing</p>	<p><u>fees charged by electronic communications networks that charge more than \$0.003 per share executed</u></p>
<p>Any other order entered by a member that is routed outside of [both] the Nasdaq [Market Center and Nasdaq's Brut] Facilit[y]ies:</p>	
<p>[Average daily shares of liquidity provided through the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month and average daily shares accessed through and/or routed from the Nasdaq Market Center and/or Nasdaq's Brut Facility by the member during the month (excluding orders routed outside of both the Nasdaq Market Center and Nasdaq's Brut Facility that do not attempt to execute in Nasdaq's Brut Facility prior to routing):]</p>	
<p>[Greater than 20 million shares of liquidity provided and greater than 40 million shares accessed and/or routed]</p>	<p>[\$0.0025 per share executed]</p>
<p>[Greater than 10 million but less than or equal to 20 million shares of liquidity provided and any amount accessed or routed, OR greater than 20 million shares</p>	<p>[\$0.0027 per share executed]</p>

of liquidity provided and 40 million or fewer shares accessed and/or routed]	
<u>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</u> [Greater than 2,000,000 but less than or equal to 10,000,000 shares of liquidity provided and any amount accessed and/or routed]	<u>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</u>
<u>Other members</u> [Less than or equal to 2,000,000 shares of liquidity provided and any amount accessed and/or routed]	<u>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 share executed</u>
<u>Order Routing for Exchange-Traded Funds Not Listed On Nasdaq</u>	
<u>Order routed to the New York Stock Exchange (“NYSE”) through its DOT system</u>	<u>See DOT fee schedule in Rule 7010(i)(6)</u>
<u>Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not</u>	<u>\$0.004 per share executed</u>

<u>attempt to execute in the Nasdaq Facilities prior to routing</u>	
<u>Order routed to the American Stock Exchange (“Amex”) after attempting to execute in the Nasdaq Facilities</u>	<u>\$0.01 per share executed</u>
<u>Order routed through the Intermarket Trading System (“ITS”) after attempting to execute in the Nasdaq Facilities</u>	<u>\$0.0007 per share executed</u>
<u>Order routed to venues other than the NYSE and Amex after attempting to execute in the Nasdaq Facilities</u>	<u>\$0.0035 per share executed</u>
[Order Cancellation]	
[Non-Directed and Preferred Orders]	[No charge]

(2) For purposes of assessing Nasdaq [Market Center and Brut] Facilit[y]ies fees and credits hereunder, (A) a Discretionary Order that executes prior to being displayed as a Quote/Order will always be deemed to be accessing liquidity unless it is executed by (or receives delivery of) a displayed Discretionary Order at a price in the discretionary price range of the displayed Discretionary Order, and (B) a Discretionary Order that executes after being displayed as a Quote/Order will always be deemed to be providing liquidity, unless the displayed Discretionary Order executes against (or is delivered to) a

Quote/Order or Non-Directed Order that has not been designated "Immediate or Cancel," at a price in its discretionary price range.

(3) No change.

(4) Opening Cross

[Commencing on January 1, 2006, m]Members shall be assessed the following Nasdaq Market Center execution fees for quotes and orders executed in the Nasdaq Opening Cross:

<p>Market-on-Open, Limit-on-Open, <u>Good-till-Cancelled</u>, <u>Immediate-or-Cancel</u>, and Day orders executed in the Nasdaq Opening Cross</p>	<p>\$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</p>
<p>All other quotes and orders executed in the Nasdaq Opening Cross</p>	<p>No charge for execution</p>

(5) Except as provided in paragraph (6), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for [There shall be no charges or credits for order entry, execution, routing, or cancellation by members accessing the Nasdaq Market Center or Nasdaq’s Brut Facility to buy or sell exchange-listed] securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans[,] other than Exchange-Traded Funds (“Covered Securities”):

[(A) the charges in Rule 7010(i)(1) for Exchange-Traded Funds,]

[(B) charges described in Rule 7010(d),]

[(C) a fee of \$0.0004 per share executed for orders delivered by Nasdaq's Brut Facility to an exchange using the exchange's proprietary order delivery system if such orders do not attempt to execute in Nasdaq's Brut Facility or the Nasdaq Market Center prior to routing to the exchange,]

[(D) a fee of \$0.009 per share executed for any limit order delivered by Nasdaq's Brut Facility to the New York Stock Exchange ("NYSE") using the NYSE's proprietary order delivery system if such an order is not an on-close order, is not executed in the opening, and remains at the NYSE for more than 5 minutes]

[(E) for a pilot period beginning December 1, 2005 and ending February 28, 2006, a credit of \$0.0005 per share executed to a member providing liquidity for a transaction in the following stocks: Advanced Micro Devices Inc. (AMD); Apache Corp. (APA); AT&T Corp. (T); Avaya, Inc. (AV); Baker Hughes, Inc. (BHI); BJ Services Co. (BJS); Bristol-Myers Squibb Co. (BMJ); Burlington Resources, Inc. (BR); Calpine Corp. (CPN); Charles Schwab Corp. (SCH); Citigroup Inc. (C); ConocoPhillips (COP); Corning Inc. (GLW); Devon Energy Corp. (DVN); EMC Corp. (EMC); Exxon Mobil Corp. (XOM); Ford Motor Co. (F); Gateway, Inc. (GTW); General Electric Co. (GE); Halliburton Co. (HAL); Hewlett-Packard Co. (HPQ); Johnson & Johnson (JNJ); JPMorgan Chase & Co. (JPM); Kohl's Corp. (KSS); LSI Logic Corp. (LSI); Micron Technology, Inc. (MU); Motorola, Inc. (MOT); Noble Corp. (NE); Occidental Petroleum Corp. (OXY); Office Depot Inc. (ODP); Pfizer Inc. (PFE); Phelps Dodge Corp. (PD);

Pulte Homes, Inc. (PHM); Qwest Communications International Inc. (Q); Schlumberger Ltd. (SLB); Solectron Corp. (SLR); Sovereign Bancorp, Inc. (SOV); Time Warner, Inc. (TWX); Valero Energy Corp. (VLO); and Verizon Communications, Inc. (VZ).]

<u>Order Execution</u>	
<u>Order that accesses the Quote/Order of a Nasdaq Facility market participant:</u>	
<u>Charge to member entering order</u>	<u>\$0.0007 per share executed</u>
<u>Credit to member providing liquidity:</u>	
<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</u>	<u>\$0.0005 per share executed</u>
<u>Other members</u>	<u>No credit</u>
<u>Order Routing</u>	
<u>Order routed to Amex</u>	<u>\$0.01 per share executed</u>
<u>Order routed through the ITS</u>	<u>\$0.0007 per share executed</u>
<u>Order routed to NYSE</u>	<u>See DOT fee schedule in Rule 7010(i)(6)</u>
<u>Order for NYSE-listed Covered Security routed to venue other than the NYSE</u>	<u>\$0.0015 per share executed</u>

<u>Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex</u>	<u>\$0.0035 per share executed</u>
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(6) The following 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:

<u>Order charged a fee by the NYSE specialist</u>	<u>\$0.01 per share executed</u>
<u>Order that attempts to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist</u>	<u>No charge</u>
<u>Order that does not attempt to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist:</u>	
<u>Average daily shares of liquidity routed through Nasdaq's DOT linkage by the member during the month:</u>	
<u>More than 30 million</u>	<u>\$0.0001 per share executed</u>
<u>Between 2,000,001 and 30 million</u>	<u>\$0.0003 per share executed</u>
<u>Between 250,001 and 2 million</u>	<u>\$0.0005 per share executed</u>
<u>Between 100,001 and 250,000</u>	<u>\$0.001 per share executed</u>
<u>100,000 or less</u>	<u>\$0.01 per share executed</u>

[(6)](7) The fees applicable to non-members using Nasdaq's Brut Facility 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 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.

(j) - (v) No change.

(w) INET System [Order Execution] Connectivity

(1) [For a period of time not to exceed 60 days after INET becomes a facility of Nasdaq, t]The following charges shall apply to telecommunication protocols [the] used [of the order execution services of] to access Nasdaq's INET System [by Participants for]:

[NASDAQ-listed securities]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:]	
[Charge to Participant entering order:]	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:]	
[Greater than 60 million shares accessed or routed and 5 million shares provided]	[\$0.0027 per share executed]
[Greater than 40 million shares but less than 60 million shares accessed]	[\$0.0028 per

or routed and 5 million shares provided]	share executed]
[Less than 5 million shares provided or less than 40 million shares accessed or routed]	[\$0.0030 per share executed]
[Credit to Participant providing liquidity:]	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:]	
[Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed]	[\$0.0025 per share executed]
[Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed]	[\$0.002 per share executed]
[Any order that matches against another order of the same Participant]	[\$0.00025 per share per side.]
[Routed Orders]	
[Any other order entered by a Participant that is routed outside of Nasdaq's INET System]	[\$0.0025 per share executed]
[Any other order entered by a Participant that is routed to the NASDAQ Opening or Closing Cross]	[\$0.001 per share executed]
[AMEX-listed stocks]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through	

Nasdaq's INET System:]	
[Credit to Participant entering order:]	[\$0.0009 per share executed]
[Charge to Participant providing liquidity:]	[\$0.001 per share executed]
[Any order that matches against another order of the same Participant]	[No charge]
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT]	[\$0.01 per share executed]
[Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT]	[\$0.0035 per share executed]
[AMEX-listed ETFs]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:]	
[Charge to Participant entering order:]	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:]	
[Greater than 60 million shares accessed or routed and 5 million shares provided]	[\$0.0027 per share executed]
[Greater than 40 million shares but less than 60 million shares accessed]	[\$0.0028 per

or routed and 5 million shares provided]	share executed]
[Less than 5 million shares provided or less than 40 million shares accessed or routed]	[\$0.0030 per share executed]
[Credit to Participant providing liquidity:]	
[Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:]	
[Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed]	[\$0.0025 per share executed]
[Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed]	[\$0.002 per share executed]
[Any order that matches against another order of the same Participant]	[\$0.00025 per share per side.]
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System to the AMEX]	[\$0.01 per share executed]
[Any order entered by a Participant that is routed outside of Nasdaq's INET System other than to the AMEX]	[\$0.0035 per share executed]
[NYSE-listed stocks]	
[Order Execution]	
[Non-Directed Order that accesses the Quote/Order of a market Participant through	

Nasdaq's INET System:]	
[Credit to Participant entering order:]	[\$0.0009 per share executed]
[Charge to Participant providing liquidity:]	[\$0.001 per share executed]
[Any order that matches against another order of the same Participant]	[No charge]
[Routed Orders]	
[Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is charged a fee by the specialist (billable)]	[\$0.01 per share executed]
[Charge to any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT that is not charged a fee by the specialist (non-billable):]	
[Average daily shares of billable and non-billable NYSE DOT shares:]	
[Greater than 30 million shares]	[\$0.0001]
[Greater than 2 million shares but less than or equal to 30 million shares]	[\$0.0003]
[Greater than 250,000 shares but less than or equal to 2 million shares]	[\$0.0005]
[Greater than 100,000 shares but less than or equal to 250,000 shares]	[\$0.001]
[Less than or equal to 100,000 shares]	[\$0.01]
[Any order entered by a Participant that is routed outside of Nasdaq's	[\$0.0015 per

INET System other than through DOT]	share executed]
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[Upon Participant’s request, added liquidity among Participants that are wholly owned by a common parent may be aggregated. INET will distribute the market data revenue based on the number of tape reportable transactions executed by the Participant, as paid to INET.]

[Market Data Revenue Sharing for AMEX Listed (Tape B) Securities]

[Subscribers that add liquidity to the INET limit order book in Tape B securities (e.g. AMEX listed securities) will receive 50% of the market data revenue paid by the Consolidated Tape Association.]

Port Fees:

Connectivity to Harborside Financial Center and Secaucus Datacenters

[\$400 per month for each OUCH[®]/FIX pair

\$400 per month for each ITCH[®] data feed pair

\$400 per month for each DROP[®] pair]

\$400 per month for each [Compressed ITCH[®] data feed] port pair, other than

[\$1000 per month for each] Multicast ITCH[®] data feed pairs, for which the fee is

\$1000 per month

Internet Ports: An additional \$200 per month for each Internet port that requires additional bandwidth.

Connectivity to Chicago Datacenter

\$800 per month for each [OUCH[®]/FIX] port pair

[\$800 per month for each ITCH[®] data feed pair

\$800 per month for each DROP[®] pair]

All port fees, not including Internet Bandwidth surcharges, will be waived for Subscribers that for a calendar month have an average daily share volume for executed orders exceeding 30 million shares of added liquidity.

INET Terminal Fees:

Each ID is subject to a minimum commission fee of \$50 per month unless it executes a minimum of 100,000 shares.

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

Each ID that is given web access is subject to a \$50 monthly fee.

Portal Fees:

Each ID is subject to a monthly user fee of \$150

Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

(2) 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, 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 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

Nasdaq proposes to establish a new fee and credit schedule for order execution and routing that spans activity on the Nasdaq Facilities.⁷ In SR-NASD-2005-128,⁸ 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 will encourage activity on the Nasdaq Facilities and will not provide financial incentives to use one system versus the other. Nasdaq notes that under the new structure, the volumes required to receive certain discounted fees or enhanced credits are higher than is the case under current pricing for the Nasdaq Market Center and Brut. Nasdaq states that this is a function of the fact that the combined volume of the three systems would be markedly higher than that of any system in isolation, so an adjustment of the tier thresholds would be necessary to prevent the combining of the systems from resulting in unwarranted fee decreases. As stated in a Current Report on Form 8-K and related press release filed by

⁷ This filing would apply to NASD members. Nasdaq has submitted SR-NASD-2006-014 to apply the same pricing structure to non-members.

⁸ 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).

Nasdaq with the Commission, Nasdaq does not currently anticipate that the new pricing structure would have a material impact on its financial results.⁹

Specific features of the new pricing structure for Nasdaq-listed securities and exchange-traded funds (“ETFs”) are as follows:

- Members with an average daily volume through the Nasdaq Facilities in all securities (i.e., listed on Nasdaq or elsewhere) 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 would pay \$0.0028 per share to access liquidity from market participants that do not charge an access fee; all others would pay \$0.003 per share to access liquidity from market participants that do not charge an access fee.¹⁰
- 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 and that do not charge an access fee would receive a credit of \$0.0025 per share when providing liquidity; others that do not charge an access fee would receive \$0.002 per share; and members that charge an access fee would not receive a credit.
- Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity

⁹ See Current Report on Form 8-K of The Nasdaq Stock Market, Inc. (January 6, 2006) (available at www.sec.gov/Archives/edgar/data/1120193/000119312506002815/0001193125-06-002815-index.htm).

¹⁰ Telephone conversation between John Yetter, Associate General Counsel, Exchange, and David Liu and Michou Nguyen, Attorneys, Division of Market Regulation (“Division”), Commission, on February 2, 2006.

provided would pay \$0.001 per share to access liquidity from market participants that charge an access fee, with a cap of \$10,000 per month; all others would pay \$0.001 per share with no cap.

When routing orders for Nasdaq-listed securities that check the books of the Nasdaq Facilities before routing, 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 would pay the greater of \$0.0028 per share or the applicable access fees of electronic communications networks (ECNs) that charge more than \$0.003 per share. Other members would pay the greater of \$0.003 per share or the applicable access fees of ECNs that charge more than \$0.003 per share. Finally, members routing orders for Nasdaq-listed securities that do not first check the books of the Nasdaq Facilities would pay the greater of \$0.004 per share or the applicable access fees of ECNs that charge more than \$0.003 per share. Thus, in most cases, Nasdaq would pass through to its market participants the cost that it is charged when routing to ECNs that charge more than \$0.003 per share.

The fees for routing ETFs not listed on Nasdaq would be as follows: (i) \$0.01 per share for an order executed to the American Stock Exchange (“Amex”) after checking the Nasdaq Facilities, (ii) \$0.0035 per share for an order executed on venues other than the New York Stock Exchange (“NYSE”) and Amex after checking the Nasdaq Facilities, (iii) \$0.0007 for an order executed through the Intermarket Trading System (“ITS”) after checking the Nasdaq Facilities, and (iv) \$0.004 per share for an order that is executed

without checking the Nasdaq Facilities.¹¹ Fees for ETF orders executed on the NYSE are described below.¹²

Specific features of the new pricing structure for non-Nasdaq-listed securities other than ETFs (“Covered Securities”) would be as follows:

- All members would pay \$0.0007 per share for orders that access liquidity from the Nasdaq Facilities.
- 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 executed¹³ would receive a credit of \$0.0005 per share of liquidity provided; others would not receive a liquidity provider credit. As a result, Nasdaq would be ending the liquidity provider credit pilot for 40 NYSE-listed stocks under Rule 7010(i)(5)(E).¹⁴
- The fees for routing Covered Securities would be as follows: (i) \$0.01 per share for an order executed on Amex, (ii) \$0.0035 per share for an order for a security listed on a venue other than the NYSE and executed on a venue other than Amex, (iii) \$0.0015 per share for an NYSE-listed

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ See Securities Exchange Act Release Nos. 53081 (January 9, 2006), 71 FR 2608 (January 17, 2006) (SR-NASD-2005-154) and 53082 (January 9, 2006), 71 FR 2607 (January 17, 2006) (SR-NASD-2005-155).

Covered Security executed on a venue other than the NYSE, and (iv) \$0.0007 per share for an order executed on the ITS.¹⁵

Fees for orders in NYSE-listed Covered Securities and NYSE-listed ETFs routed to the NYSE through its DOT system are described below:

- Orders that are routed through DOT after accessing the Nasdaq Facilities and that are not charged a fee by the NYSE specialist would be free. Members would pay a fee of \$0.01 per share for orders that are charged a fee by the NYSE specialist.
- The fee for orders routed through DOT without accessing the Nasdaq Facilities would depend on a member's volume of usage of Nasdaq's DOT linkage. Members routing an average daily volume of more than 30 million shares during the month would pay \$0.0001 per share executed; members routing between 2,000,001 and 30 million shares would pay \$0.0003 per share executed; members routing between 250,001 and 2 million shares would pay \$0.0005 per share executed; members routing between 100,001 and 250,000 shares would pay \$0.001 per share executed; and members routing 100,000 shares or less would pay \$0.01 per share executed.

Other changes being effected by the proposed rule change would be as follows:

- Nasdaq would be eliminating fee and credit caps currently in place for trades priced under \$1. Nasdaq states that the caps were instituted as a

¹⁵ Telephone conversation between John Yetter, Associate General Counsel, Exchange, and David Liu and Michou Nguyen, Attorneys, Division, Commission, on February 2, 2006.

response to high trading volumes in certain low-priced stocks several years ago and have less relevance to the current trading environment.

- Good-till-Cancelled and Immediate-or-Cancel orders would be added to the list of order types that pay a \$0.0005 per share fee when executed in Nasdaq's Opening Cross. Other fees for the Opening Cross and the Closing Cross would be unchanged.
- The Nasdaq Market Center and Brut would no longer share market data revenue associated with transactions in securities listed on the NYSE that are executed through these systems. Nasdaq represents that Inet does not currently share such revenue.
- Most Inet fees contained in Rule 7010(w) would be deleted. However, fees for use of Inet's telecommunications protocols would be maintained. Since Inet continues to use different telecommunications protocols and is operated out of its own data centers, Nasdaq believes that it is appropriate to maintain Inet's current connectivity pricing. Nasdaq believes that the telecommunications charges associated with accessing Inet are comparable to those associated with accessing the Nasdaq Market Center and Brut. However, Nasdaq would be deleting some redundant language from the rule language describing these fees.

Nasdaq would be deleting unnecessary references to order entry fees, order cancellation fees, and preferenced orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,¹⁶ in general, and with Section 15A(b)(5) of the Act,¹⁷ 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. Nasdaq states that the proposed rule change, as amended, would establish a uniform fee schedule for the Nasdaq Facilities that takes account of the higher volumes associated with the combining of the Nasdaq Facilities for purposes of determining pricing discounts. Nasdaq does not currently anticipate that the new pricing structure would have a material impact on its financial results.

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.

¹⁶ 15 U.S.C. 78o-3.

¹⁷ 15 U.S.C. 78o-3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, is subject to Section 19(b)(3)(A)(ii) of the Act¹⁸ and subparagraph (f)(2) of Rule 19b-4¹⁹ thereunder because it establishes or changes a due, fee, or other charge 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 such 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.²⁰

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-013 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ The effective date of the original proposed rule change is January 30, 2006, and the effective date of Amendment No. 1 is February 1, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on February 1, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-013. 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-2006-013 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.²¹

Nancy M. Morris
Secretary

²¹ 17 CFR 200.30-3(a)(12).