

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53320; File No. SR-NASD-2006-023)

February 15, 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 Modify Pricing 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 February 13, 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 14, 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) of the Act,⁴ 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.

I. Self-Regulatory Organization's Statement of the Terms of 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") to trade securities priced

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made certain technical corrections to the proposed rule text.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

under \$1.00. Nasdaq states that it will implement the proposed rule change on February 13, 2006. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in underlined; proposed deletions are in [brackets].⁶

7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center, Brut, and Inet 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, Brut, and Inet (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. 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 Execution	
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 Facilities:	
Charge to member entering order:	

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).

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	\$0.0028 per share executed (<u>or, in the case of executions against Quotes/Orders at less than \$1.00 per share, 0.1% of the total transaction cost</u>)
Other members	\$0.0030 per share executed (<u>or, in the case of executions against Quotes/Orders at less than \$1.00 per share, 0.1% of the total transaction cost</u>)
Credit to member providing liquidity:	

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	\$0.0025 per share executed (<u>or \$0, in the case of executions against Quotes/Orders at less than \$1.00 per share</u>)
Other members	\$0.0020 per share executed (<u>or \$0, in the case of executions against Quotes/Orders at less than \$1.00 per share</u>)
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]Facilities:	
Charge to member entering order:	
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	\$0.001 per share executed (but no more than \$10,000 per month)
Other members	\$0.001 per share executed
Order Routing for Nasdaq-Listed Securities	
Any order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing	The greater of (i) \$0.004 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
Any other order entered by a member that is routed outside of the Nasdaq Facilities:	
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	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
Other members	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.

Order Routing for Exchange-Traded Funds Not Listed On Nasdaq	
Order routed to the New York Stock Exchange (“NYSE”) through its DOT system	See DOT fee schedule in Rule 7010(i)(6)
Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing	\$0.004 per share executed
Order routed to the American Stock Exchange (“Amex”) after attempting to execute in the Nasdaq Facilities	\$0.01 per share executed
Order routed through the Intermarket Trading System (“ITS”) after attempting to execute in the Nasdaq Facilities	\$0.0007 per share executed

Order routed to venues other than the NYSE and Amex after attempting to execute in the Nasdaq Facilities	\$0.0035 per share executed
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(2) – (7) No change.

(j) - (w) 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

Since the beginning of February, Nasdaq has observed an increase in the extent to which market participants are posting limit orders in certain securities priced under \$1.00 in circumstances where the price of the posted order locks or crosses prices available on other markets or improves upon the NBBO by an extremely small amount. The alteration in market participant behavior appears to be a result of both Nasdaq’s introduction of subpenny pricing in Nasdaq-listed securities priced under \$1.00, as well as the dissemination of said pricing via the Securities Information Processor, and a recent Nasdaq pricing change that eliminated caps on liquidity provider rebates for these securities. As a result, it appears that certain participants are

submitting orders in these low-priced securities in a manner calculated to earn liquidity provider rebates. Because Nasdaq considers this behavior detrimental to market quality, Nasdaq proposes to modify its pricing for securities priced under \$1.00 to eliminate the liquidity provider credit. To offset the effect of this change on market participants engaged in legitimate trading of these securities, Nasdaq also proposes to reduce the fee to access liquidity in these stocks from the current fee of \$0.0028 or \$0.003 per share to a charge equal to 0.1% of the total transaction cost. Thus, in a transaction to buy 1,000 shares at \$0.50, the charge to access liquidity would be \$0.50. This change will also ensure that Nasdaq's pricing for low-priced securities is consistent with Rule 610(c)(2) of Regulation NMS when it takes effect later this year. Rule 610(c)(2) will limit fees for access to quotations under \$1.00 to no more than 0.3% of the quotation price per share.

This filing applies to NASD members and is effective immediately. Nasdaq is also submitting a filing to apply the changes to non-members using the Brut and Inet facilities,⁷ and also plans to submit a filing to make both the member and non-member changes retroactive to February 1, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ 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

⁷ See Securities Exchange Act Release No. 53321 (February 15, 2006) (File No. SR-NASD-2006-024).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

NASD operates or controls. Nasdaq states that the proposed rule change, as amended, would modify Nasdaq's fees and rebates associated with Nasdaq-listed securities priced under \$1.00 in order to eliminate incentives to engage in behavior with respect to such securities that has degraded market quality.

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

Written comments were neither solicited nor received.

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

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder¹¹ because it establishes or changes a due, fee, or other charge applicable only to a member 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 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.¹²

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the

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 No. SR-NASD-2006-023 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 No. SR-NASD-2006-023. 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 will also be available for inspection and copying at the principal office of the NASD.

Commission considers that period to commence on February 14, 2006, the date that the NASD filed Amendment No. 1.

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 No. SR-NASD-2006-023 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.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).