

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53321; File No. SR-NASD-2006-024)

February 15, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Modify Pricing for Non-Members Using 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut and Inet Facilities to trade securities priced under \$1.00. The filing will apply to these non-members the same pricing change that Nasdaq is instituting for members.³ Nasdaq seeks approval to implement the proposed rule change retroactively as of February 13, 2006. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53321 (February 15, 2006) (File No. SR-NASD-2006-023).

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 had 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

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. Nasdaq believes 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.

In SR-NASD-2006-023, Nasdaq made this change applicable to NASD members on an immediately effective basis. Nasdaq is submitting this filing to apply the changes to non-members using the Brut and Inet facilities, 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 is consistent with the provisions of Section 15A of the Act,⁴ in general, and with Section 15A(b)(5) of the Act,⁵ 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. The proposed rule change applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use the Nasdaq Facilities. Accordingly, Nasdaq believes that the proposed rule change promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

⁴ 15 U.S.C. 78q-3.

⁵ 15 U.S.C. 78q-3(b)(5).

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. 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. Please include File Number SR-NASD-2006-024 on the subject line.

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-2006-024. 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 publicly available. All submissions should refer to File Number SR-NASD-2006-024 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.⁶ Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁷ 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 Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective February 13, 2006, pursuant to SR-NASD-2006-023.

⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78q-3(b)(5).

Nasdaq has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2006-023, which implemented those fees for NASD members and which became effective as of February 13, 2005. 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. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2006-024) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).