

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53770; File No. SR-NASD-2006-030)

May 8, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish an Annual Administrative Fee for Market Data Distributors that are Recipients of Nasdaq Proprietary Data Products

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 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. Nasdaq filed Amendment No. 1 to the proposed rule change on April 17, 2006. 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 establish an annual administrative fee for market data distributors that are recipients of Nasdaq proprietary data products. The text of the proposed rule change is below. Proposed new language is underlined.<sup>3</sup>

7010 System Services

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasdaq.com](http://www.nasdaq.com). No pending rule filings would affect the text of this rule. Because of the nature of this rule, no conforming change will be made to the rules of The NASDAQ Stock Market LLC. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

(a) – (w) No change

(x) Nasdaq Annual Administrative Fee

The Nasdaq Annual Administrative Fee shall be assessed to market data distributors that receive any proprietary Nasdaq data feed product. Each such distributor shall, on an annual basis, be assessed the higher of the applicable Nasdaq Annual Administrative Fees:

Delayed Nasdaq distributor \$500

Real-Time Nasdaq distributor (includes delayed fee, if applicable) \$1,000

The Association may waive the foregoing fee for colleges and universities for devices used by students and professors in performing university or college research or classroom-related activities.

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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. 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

As market data administration becomes more automated, Nasdaq has strived to ensure that its systems lead the industry in ease of use and effectiveness. In the past few years, Nasdaq has implemented a multitude of systems to improve vendor communication. This trend is likely to continue, as market data distributors demand greater automation of the process to subscribe to

market data feeds, increased electronic access to information regarding their market data usage, and shorter processing times to approve requests for changes in service.

To further Nasdaq's proactive approach to improving market data administration, Nasdaq proposes to introduce an annual administrative fee for all distributors receiving proprietary Nasdaq data feed products. This fee will allow Nasdaq to recover the ongoing fixed market data administrative costs, such as the costs of establishing and maintaining new market data distributors, as well as the costs to maintain and improve the administrative tools distributors utilize to subscribe to and monitor their data products usage.

Currently, Nasdaq market data distributors are not assessed an annual administrative fee for the use of proprietary Nasdaq data feed products.<sup>4</sup> The amount of the new fee, which will be assessed on an annual basis, will vary based on whether a distributor uses Nasdaq data on a delayed or a real-time basis. A distributor that only receives delayed data will pay the Delayed Nasdaq Annual Administrative Fee of \$500; a distributor that receives real-time data will pay the Real-Time Nasdaq Annual Administrative Fee of \$1,000, and a distributor that receives both real-time and delayed data feeds will pay the Real-Time Nasdaq Annual Administrative Fee of \$1,000.

Consistent with the current practice of the American Stock Exchange,<sup>5</sup> Nasdaq is proposing that accredited colleges and universities that can establish that they are using proprietary data for research and classroom-related activities may receive a waiver of the administrative fee. This fee waiver recognizes the high value that Nasdaq places on research and educational instruction at the university level. To be considered for an academic waiver, the

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<sup>4</sup> Distributors pay an annual administrative fee regarding their usage of UTP data feed products. See NASD Rule 7010(1)(1).

<sup>5</sup> See Amex Academic Waiver Policy at [www.amex.com/amextrader](http://www.amex.com/amextrader).

university's program sponsor should submit to Nasdaq a written request stating the name and description of the academic program, the company and contact name of the external distributor to provide the data, the number of devices with access to real-time data, an approximate number of students and faculty in the program, and a brief description of how market data will be used in the program.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general and with Section 15A(b)(5) of the Act,<sup>7</sup> in particular, in that the revised and updated fee schedule provides for the equitable allocation of reasonable charges among the persons distributing and purchasing Nasdaq market center data. Nasdaq believes the proposed fees will enable Nasdaq to provide a lower total cost of market data ownership, given the reduced network and processing expenses associated with receiving only the data actually needed. Nasdaq believes that facilitating more efficient redistribution of real-time market data will improve transparency and thereby benefit the investing public.

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

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<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASD-2006-030 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-2006-030. 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 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-2006-030 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).