

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54160; File No. SR-NASD-2006-057)

July 17, 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 Regarding the 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 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 June 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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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> In Amendment No. 1, Nasdaq amended proposed Rule 7010(i)(7) to indicate that when a market participant enters an order into Nasdaq's Brut or INET systems that is sent to a Nasdaq Market Center market participant that charges an access fee to Brut or INET, the market participant entering the order shall be charged (i) the applicable execution fee of the Nasdaq Facilities, or (ii) in the case of executions against Quotes/Orders at less than \$1.00 per share, a pass-through of the access fee charged to Brut or INET. Nasdaq also made conforming changes to the description of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 C.F.R. 240.19b-4(f)(2).

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 (the "Nasdaq Facilities"). Nasdaq implemented the proposed rule change on May 1, 2006.

The text of the proposed rule change, as amended, is available on the NASD's Web site (<http://www.nasd.com>), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

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

Nasdaq is proposing to reduce its fees for routing orders from its three trading platforms – the Nasdaq Market Center, Brut, and INET – to the American Stock Exchange ("Amex"). Specifically, whereas Nasdaq now charges \$0.01 per share executed for routing such orders, the fee will be reduced to \$0.003 per share executed. However, an additional fee of \$0.01 would be charged in cases where the Amex specialist charges a fee to execute the order (which generally occurs when the order remains on the specialist book for more than a certain amount of time before being executed).

Nasdaq is also broadening the conditions under which a member may qualify for a reduced fee of \$0.0028 per share executed to access liquidity and route orders in Nasdaq-listed securities and exchange-traded funds. Currently, members qualify for the \$0.0028 fee (a reduction from the otherwise applicable fee of \$0.003 per share executed) if they (i) provide an daily average of more than 30 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 50 million shares of liquidity during a month. With the proposed rule change, the reduced fee would also be available to members that (i) provide a daily average of more than 20 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 60 million shares of liquidity during a month. Thus, the change will broaden the availability of the reduced fee to members that provide comparatively less liquidity but access and/or route comparatively more liquidity.

Nasdaq is also adding rule text to clarify the fee to be charged with respect to orders that are entered into Brut or INET and then sent to a Nasdaq Market Center participant that charges an access fee to Brut or INET. When the execution price of the stock is greater than \$1.00, Nasdaq charges its usual order execution fee of \$0.0028 or \$0.003, which will generally approximate the access fee charged to Brut or INET. In the case of stocks price at \$1.00 or less, Nasdaq's order execution fee of 0.1% of the total transaction cost would not allow it to recoup the access fee charged to Brut or INET. Accordingly, in those cases, Nasdaq passes through the ECN access fee to the market participant that entered the order into Brut or INET.

## 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 it

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

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 reduces fees for routing to Amex in most cases, broadens the availability of a reduced fee to access liquidity and route orders, and clarifies the fee charged with respect to orders entered into Brut or INET and sent for execution to a Nasdaq Market Center participant that charges an access fee.”

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>10</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-057 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-2006-057. 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

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<sup>10</sup> The effective date of the original proposed rule change is May 1, 2006 and the effective date of the amendment is June 12, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 12, 2006, the date on which the NASD submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 Section, 100 F Street, NE, Washington, DC 20549. 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-2006-057 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.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).