

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54258; File No. SR-NASD-2006-080)

August 1, 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 Extend the Time for Non-Member Broker/Dealers to Access the 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 July 3, 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. On July 5, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq filed the proposed rule change as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 continue the participation of broker/dealers that are non-NASD members in Nasdaq’s Brut and INET systems through the earlier of September 1, 2006, or the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq revised the proposed rule text to conform it with the existing language of NASD Rule 4901.

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq has requested the Commission to waive the 30-day pre-operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion infra Section III.

date Nasdaq becomes operational as a national securities exchange for the particular types of securities traded by those non-members in Nasdaq's INET and Brut systems. The purpose of the proposed rule change is to allow the non-NASD member broker/dealers to have continued access to the Brut and INET systems while they take actions to become members of The NASDAQ Stock Market LLC ("Nasdaq Exchange").⁶ Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is underlined. Proposed deletions are in [brackets].

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4901. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (h) No change

(i) The term "Participant" shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. The term "Participant" shall also include non-NASD broker/dealers that desire to use the System and otherwise meet all other requirements for System participation. Non-NASD member broker/dealers shall have access to System until the earlier of either [July] September 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

(j) through (w) No Change

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⁶ The Commission recently approved Nasdaq's application for one of its proposed subsidiaries, The NASDAQ Stock Market LLC, to be registered as a national securities exchange under Section 6 of the Act. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) – (5) No Change

(6) In addition to the above, all System Participants shall be members of the Association. Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either [July] September 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

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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, the Exchange 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, Proposed Rule Change

1. Purpose

Nasdaq states that, under current rules, broker/dealers that are not members of the NASD may use the Brut and INET systems until July 1, 2006. Nasdaq is proposing to modify this provision to allow non-NASD member broker/dealers to use the Brut and INET systems until the earlier of either September 1, 2006, or the date that Nasdaq becomes operational as a national

securities exchange for the particular class of securities traded by the non-member. Nasdaq believes that this division of dates upon which non-NASD members must be members of the Nasdaq Exchange in order to continue to use Nasdaq's trading facilities is necessary because Nasdaq plans to become operational as a national securities exchange in two phases, with the first involving only Nasdaq securities and a second, subsequent phase involving securities listed by other national securities exchanges. Under the proposal, non-NASD members trading Nasdaq-listed securities would be required to be a Nasdaq Exchange member to continue to trade Nasdaq securities in Brut and INET on the date that Nasdaq becomes operational as a national securities exchange for Nasdaq issues, while entities trading other exchange-listed securities would be allowed continued access to the Brut and INET systems for such trading until such time as Nasdaq becomes operational as a national securities exchange for non-Nasdaq issues. Nasdaq states that in neither scenario would non-NASD member access to the Brut and INET systems extend beyond September 1, 2006 without a further extension.

Nasdaq states that this extension is intended to allow these non-NASD member broker/dealers to have continued access to Brut and INET while they take actions to become members of the recently-approved Nasdaq Exchange. Nasdaq notes that only 44 non-NASD member broker/dealers currently have access to its Brut and INET systems (4 in the Brut system and 40 in the INET system) and, as before, Nasdaq commits not to allow any additional non-NASD broker/dealers access during this extension period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of

Section 15A of the Act,⁷ in general, and with Section 15A(b)(6) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system.

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

Nasdaq states that written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to thirty days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ See 17 CFR 240.19b-4(f)(6)(iii).

¹² Id.

designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and the five-day pre-filing notice requirement and designate the proposed rule change to become effective upon filing. Nasdaq believes that waivers of such periods will allow continued uninterrupted access to the Brut and INET systems for non-member broker/dealers in the period of time immediately preceding Nasdaq's operation as a national securities exchange. The Commission believes that waiving the 30-day pre-operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest because it would facilitate the orderly transition of Nasdaq to become a national securities exchange, thus removing impediments to a free and open market and a national market system. In addition, the Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because such waiver would allow non-NASD member broker/dealers to continue to participate in Brut and INET while they take actions to become members of the Nasdaq Exchange. For the foregoing reasons, the Commission designates the proposal to become effective and operative immediately.¹³

At any time within sixty 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 the furtherance of the purposes of the Act.¹⁴

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ The effective date of the original proposed rule change is July 3, 2006, and the effective date of Amendment No. 1 is July 5, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission

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-2006-080 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-2006-080. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection

considers the period to commence on July 5, 2006, the date on which the Exchange submitted Amendment No. 1.

and copying at the principal office of Nasdaq. 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-2006-080 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).