

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54614; File No. SR-NASD-2006-117)

October 17, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance the Brut Directed Cross Order

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 October 4, 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. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to enhance the flexibility of the Brut Directed Cross Order by allowing it to check and, if appropriate, interact with available liquidity in any of Nasdaq’s three execution systems (ITS/CAES System, Brut, and INET) before further processing. Nasdaq has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁵

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

4903. Order Entry Parameter

(a) No Change.

(b) Brut Cross Orders—

(1) General. A Brut Cross Order is an order that is displayed in the System, and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. With the exception of Directed Cross Orders, once a Brut Cross Order is routed (in whole or in part) to another market center, any remaining unexecuted or returned portion of the order shall be posted in System and shall no longer be eligible for routing to other market centers. Directed Cross Orders directed to the New York Stock Exchange shall remain at the exchange until executed or cancelled by the entering party.

(A) - (C) No Change.

(D) A Brut Cross Order may also be designated as a Directed Cross Order. A Directed Cross Order is an order that is entered into the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. After being processed and exhausting available liquidity, the order is automatically routed to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order

⁵ 17 CFR 240.19b-4(f)(6)(iii).

that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed Cross Orders directed to the New York Stock Exchange [if, after being processed in the Brut System and exhausting available liquidity in the Brut System], such orders will first interact with any available liquidity in the Brut, INET, and ITS/CAES systems [be automatically routed to the ITS/CAES System and INET for potential execution] and thereafter, if instructed by the entering party, to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders directed to the New York Stock Exchange shall remain at the New York Stock Exchange until executed or cancelled by the entering party.

(E) – (F) No Change.

(c) – (f) 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 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 proposes to increase the flexibility of the Brut Directed Cross Order for orders directed to the New York Stock Exchange ("NYSE"). Currently parties entering a Brut Directed Cross Order directed to the NYSE have those orders first processed in the Brut System and, after exhausting available liquidity in the Brut System, thereafter automatically routed to the ITS/CAES System and Nasdaq's INET Facility for potential execution and finally, if instructed by the entering party, to other market centers that provide automated electronic executions before being sent to the NYSE. Nasdaq proposes to modify the behavior of the Brut Directed Cross Order so that it will now check and, if appropriate, interact with available liquidity in any of the following Nasdaq-operated execution facilities: the ITS/CAES System, Nasdaq's Brut Facility, and Nasdaq's INET Facility, before being sent upon request to other market centers that provide automated electronic executions before finally being delivered to the NYSE. Nasdaq notes that each Nasdaq-operated execution facility would be checked for available liquidity before the order is routed away to another market.⁶

Nasdaq believes that the above change will enhance the ability of market participants to take advantage of beneficial liquidity residing across all three of Nasdaq's current execution systems. Further, such processing will increase the likelihood of having users' NYSE-bound orders executed electronically thereby improving the speed and efficiency of the market as a whole. As before, no Brut Directed Cross Order will execute in a Nasdaq-operated execution venue at an inferior price to one that is available at an accessible alternative venue.

⁶ Telephone conversation between Tomas Moran, Associate General Counsel, Nasdaq, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on October 10, 2006.

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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least

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)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq has fulfilled the five-day pre-filing requirement. Nasdaq has requested that the Commission waive the 30-day pre-operative delay. 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 immediately allow a Brut Directed Cross Order to check and, if appropriate, interact with available liquidity in any of Nasdaq's three execution systems (ITS/CAES System, Brut, and INET) before further processing. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.¹¹

At any time within 60 days of the filing of such 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.

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

¹¹ For the purposes only of waiving the 30-day pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-117 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-2006-117. 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 the 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-2006-117 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.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).