

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54728; File No. SR-NASD-2006-114)

November 8, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an Automated Process for Opening Quotations of ITS/CAES Market Makers

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 September 29, 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 filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 establish an automatic process for opening quotes in non-Nasdaq securities through the ITS/CAES System. Nasdaq implemented the proposed rule change on October 9, 2006.<sup>5</sup> The text of the proposed rule change is available on the Nasdaq’s Web site at

---

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Telephone conversation between John Yetter, Senior Associate General Counsel, Nasdaq, and Natasha Cowen, Special Counsel, Division of Market Regulation, Commission, on November 7, 2006.

<http://www.nasdaq.com>, at Nasdaq'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 establish a procedure for automated initial display of quotations by ITS/CAES Market Makers. The procedure would be substantially the same as the existing procedure of The NASDAQ Stock Market LLC (the "Nasdaq Exchange") for automated opening quotes by market makers in Nasdaq-listed stocks under Nasdaq Exchange Rule 4704(b). Specifically, the ITS/CAES System will display initial quotes of ITS/CAES Market Makers in one of three ways, at the option of the market maker: (i) at the last price and size (either including or excluding reserve size) entered by the market maker on the preceding trading day; (ii) at a price and size entered by the market maker prior to 9:25 a.m., or (iii) at a system-generated price of \$0.01 (bid) and \$200,001 (ask) and a size of 100 shares.<sup>6</sup> Firms choosing the first two options will have their quotes displayed at such time as they specify, or if no time is

---

<sup>6</sup> Nasdaq notes that the default settings are different for ITS/CAES than for the Nasdaq Exchange to reflect the extremely high share prices of a small number of stocks listed on the New York Stock Exchange.

specified, then at 9:25 a.m. Firms choosing the third option will have their quotes displayed at 9:25 a.m. Any quotes generated through this process will be replaced as soon as a market maker submits a quote update. The automated process will ensure that market makers do not inadvertently fail to maintain a two-sided quote at market open. The quotes displayed through this process will not be available for execution until 9:30 a.m.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,<sup>7</sup> in general, and furthers the objectives of Section 15A(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. The proposed rule change assists ITS/CAES market makers in maintaining a two-sided quote at market open and replicates functionality currently in use by the Nasdaq Exchange with respect to Nasdaq-listed stocks.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose 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 has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

---

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

(ii) impose any significant burden on competition; and

(iii) become operative for 30 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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>11</sup> Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to 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 operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable ITS/CAES market makers to maintain a two-sided quote at market open and would replicate functionality currently in use by the Nasdaq Exchange

---

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> Id.

<sup>13</sup> Id.

with respect to Nasdaq-listed stocks. For the reasons stated above, the Commission therefore designated the proposal to become operative upon filing.<sup>14</sup>

At any time within 60 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 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-114 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-2006-114. 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

---

<sup>14</sup> For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 offices 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-2006-114 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>15</sup>

Nancy M. Morris  
Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).