

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55129; File No. SR-NASD-2006-137)

January 18, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using ITS/CAES System and Inet Facility

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 December 29, 2006, the National Association of Securities Dealers, Inc. (“NASD”) 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 substantially by NASD. NASD submitted the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,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 from interested persons.

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

NASD proposes to amend NASD Rule 7010 to modify the pricing for its members using the ITS/CAES System and the Inet facility (the “Nasdaq Facilities”), which are currently operated by The Nasdaq Stock Market, Inc. and its subsidiaries (“Nasdaq”) as facilities of NASD. The text of the proposed rule change is available on the NASD’s Web site at <http://www.nasd.com>, at NASD and at the Commission’s Public Reference Room.

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)(2).

⁵ NASD stipulated the implementation date to be January 2, 2007.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

This proposed rule change adopts a simplified pricing schedule for the systems for trading non-Nasdaq exchange-listed securities that are currently operated as NASD facilities by Nasdaq. The fees apply to the Nasdaq Facilities, but as is currently the case with respect to fees for these systems, the fee schedule reflects the volume of a member's use of ITS/CAES, Inet, and the Nasdaq Market Center (a facility of The NASDAQ Stock Market LLC (the "Nasdaq Exchange")) in determining applicable fees.⁶ The order execution fees in the Nasdaq Facilities, fees for routing to venues other than the New York Stock Exchange (the "NYSE"), and fees for routing orders in exchange-traded funds to the NYSE will be as follows:

- \$0.0027 per share executed for market participants that (i) add more than 30 million shares of liquidity per day during the month and route or remove more than 50

⁶ The consideration of volumes through the Nasdaq Exchange is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fee schedules will be amended to remove all references to Nasdaq at or shortly after the time when the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities. The Nasdaq Exchange has submitted a comparable filing to establish the same fees for Nasdaq-listed securities, which likewise considers trading volumes through ITS/CAES and Inet. See SR-NASDAQ-2006-068.

million shares of liquidity per day during the month, or (ii) add more than 20 million shares of liquidity per day during the month and route or remove more than 60 million shares of liquidity per day during the month;

- \$0.0028 per share executed for market participants that add more than 20 million shares of liquidity per day during the month and route or remove more than 35 million shares of liquidity during the month;
- \$0.003 per share executed for other market participants;

The order execution fee for routed orders that do not attempt to execute in the Nasdaq Facilities prior to routing will be \$0.003 per share executed and the credits to members providing liquidity through the Nasdaq Facilities will be as follows:

- \$0.0025 per share executed for market participants adding more than 30 million shares of liquidity per day during the month;
- \$0.002 for other market participants.

As is currently the case, for orders in securities other than exchange-traded funds routed to the NYSE, the fee will be \$0.000225 per share executed if the order attempts to execute in the Nasdaq Facilities prior to routing and \$0.000275 per share executed if the order does not attempt to execute prior to routing. The new fee schedule will also retain the current surcharge of \$0.01 per share executed for orders charged a fee by an American Stock Exchange specialist.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,⁷ in general, and furthers the objectives of Section 15A(b)(5) of the Act,⁸ in particular, in that it 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.

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

NASD 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

NASD 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ because it establishes or changes a due, fee, or other charge imposed by the NASD. 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.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-NASD-2006-137 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-2006-137. 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 offices 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-2006-137 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).