

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51862; File No. SR-NASD-2005-039)

June 16, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Incorporate the Brut System Book Feed Into the TotalView Entitlement

On March 30, 2005, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to incorporate Brut's System Book Feed into the TotalView entitlement. The proposed rule change was published for comment in the Federal Register on May 17, 2005.³ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁵ which requires, among other things, that the rules of the association provide 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 association operates or controls.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51683 (May 11, 2005), 70 FR 28345 ("Notice").

⁴ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

Nasdaq has proposed to modify NASD Rule 7010(q)(1) to incorporate Brut's System Book Feed within Nasdaq's TotalView entitlement. Nasdaq's TotalView data feed provides information regarding all quotes and orders in the Nasdaq Market Center (including, but not limited, to Brut orders), while the Brut System Book Feed, contains the same information with respect to orders in Brut. In the Notice, Nasdaq stated that it would make this proposal effective on July 1, 2005.

The Commission believes that the inclusion of the Brut System Book Feed into Nasdaq's TotalView entitlement for fee purposes should enable Nasdaq to equitably charge for Brut depth of book information, regardless of the source from which it is received. In approving the proposed rule change, the Commission notes that Nasdaq has stated that TotalView subscribers may obtain the Brut System Book Feed upon request of Nasdaq. In addition, the Commission notes that Nasdaq has stated that, in order to ease the transition of market participants to a single platform, it intends to distribute Brut order information via both TotalView and the System Book Feed as long as Brut remains a separate Nasdaq facility.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-NASD-2005-039) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).