

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52121; File No. SR-NASD-2005-088)

July 25, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-NASD Member Access to Nasdaq's Brut 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 July 15, 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 ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,³ 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 extend, through December 31, 2005, the ability of non-NASD member firms to use Nasdaq's Brut Facility. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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4901. Definitions

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(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. Until [July] December 31, 2005, the term "Participant" shall also include non-NASD members that desire to use the System and otherwise meet all other requirements for System participation.

(j) through (w) **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

Currently, Brut provides direct access to its system to non-NASD member entities. As part of the original approval of Brut's Rules, Nasdaq and Commission Staff agreed to allow Brut to continue to provide such non-NASD member access until July 31, 2005. This filing seeks to extend Brut's ability to provide non-NASD member access through December 31, 2005, while Nasdaq and Commission staff continue to review issues related to non-member participation in facilities owned by self-regulatory organizations.

During the period of the above extension, Nasdaq will continue, pursuant to NASD Rule 4914, to maintain procedures and internal controls to restrict the flow of confidential information between the Brut System and the separate introducing broker functions that Brut performs for non-NASD member firms.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general and with Section 15A(b)(6) of the Act,⁵ 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 would 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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective as a non-controversial proposal pursuant to Section 19(b)(3)(A) of the Exchange Act⁶ and Rule 19b-4(f)(6)⁷ thereunder because the rule change does not: (i) significantly affect the protection of investors or the public interest; (ii)

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

impose any significant burden on competition; or (iii) become operative for 30 days from the day 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.

Nasdaq has requested that the Commission waive the five-day notice requirement and 30-day operative delay period so that the proposed rule change will be immediately operative. The Commission notes that the proposed rule change will not introduce any new changes to the current level of access to Nasdaq's Brut Facility, but will merely extend the access that is currently available to non-NASD members through Brut for an additional five months. The Commission also notes that the current rule granting non-NASD members access to Nasdaq's Brut Facility expires on July 31, 2005. Therefore, the Commission has determined to waive the five-day notice requirement and 30-day operative delay because such waiver will enable Nasdaq to implement the rule immediately and avoid any lapse in Brut access for non-NASD members.⁸

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:

⁸ For purposes only of waiving the 30-day operative delay only, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

- 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-2005-088 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-088. 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 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-2005-088 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

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).