

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53081; File No. SR-NASD-2005-154)

January 9, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Modify Pricing for NASD Members Using the Nasdaq Market Center and 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 December 28, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)⁴ of the Act and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 ("Amendment No. 1") clarified that the proposed rule change is a pilot program.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility ("Brut"). Nasdaq states that it will implement the proposed rule change on January 1, 2006 for a pilot period running through February 28, 2006.

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

* * * * *

7010. System Services

(a) - (h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1) - (4) No change.

(5) There shall be no charges or credits for order entry, execution, routing, or cancellation by members accessing the Nasdaq Market Center or Nasdaq's Brut Facility to buy or sell exchange-listed securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans, other than:

(A) - (D) No change.

(E) for a pilot period beginning December 1, 2005 and ending [December 31, 2005]February 28, 2006, a credit of \$0.0005 per share executed to a member providing liquidity for a transaction in the following stocks: Advanced Micro Devices Inc. (AMD); Apache Corp. (APA); AT&T Corp. (T); Avaya, Inc. (AV); Baker Hughes, Inc. (BHI); BJ Services Co. (BJS); Bristol-Myers Squibb Co. (BMY); Burlington

Resources, Inc. (BR); Calpine Corp. (CPN); Charles Schwab Corp. (SCH); Citigroup Inc. (C); ConocoPhillips (COP); Corning Inc. (GLW); Devon Energy Corp. (DVN); EMC Corp. (EMC); Exxon Mobil Corp. (XOM); Ford Motor Co. (F); Gateway, Inc. (GTW); General Electric Co. (GE); Halliburton Co. (HAL); Hewlett-Packard Co. (HPQ); Johnson & Johnson (JNJ); JPMorgan Chase & Co. (JPM); Kohl's Corp. (KSS); LSI Logic Corp. (LSI); Micron Technology, Inc. (MU); Motorola, Inc. (MOT); Noble Corp. (NE); Occidental Petroleum Corp. (OXY); Office Depot Inc. (ODP); Pfizer Inc. (PFE); Phelps Dodge Corp. (PD); Pulte Homes, Inc. (PHM); Qwest Communications International Inc. (Q); Schlumberger Ltd. (SLB); Solectron Corp. (SLR); Sovereign Bancorp, Inc. (SOV); Time Warner, Inc. (TWX); Valero Energy Corp. (VLO); and Verizon Communications, Inc. (VZ).

(6) No change.

(j) - (v) 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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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

In SR-NASD-2005-137 and SR-NASD-2005-138,⁶ Nasdaq created a pilot program under which liquidity providers (i.e., market participants that post quotes or orders that are accessed by incoming orders)⁷ may receive a credit of \$0.0005 per share executed with respect to forty stocks listed on the New York Stock Exchange.⁸

As stated in the prior filings, Nasdaq notes that it planned to run the pilot for a period of at least three months; however, Nasdaq states that, because the authority for this proposal provided by the Nasdaq Board of Directors ran only through December 31,

⁶ Securities Exchange Act Release Nos. 52939 (December 9, 2005), 70 FR 75229 (December 19, 2005) (SR-NASD-2005-137) and 52938 (December 9, 2005), 70 FR 75231 (December 19, 2005) (SR-NASD-2005-138).

⁷ Telephone conversation between John Yetter, Associate General Counsel, Exchange, and Michou Nguyen, Attorney, Division of Market Regulation, Commission, on January 4, 2006.

⁸ Advanced Micro Devices Inc. (AMD); Apache Corp. (APA); AT&T Corp. (T); Avaya, Inc. (AV); Baker Hughes, Inc. (BHI); BJ Services Co. (BJS); Bristol-Myers Squibb Co. (BMY); Burlington Resources, Inc. (BR); Calpine Corp. (CPN); Charles Schwab Corp. (SCH); Citigroup Inc. (C); ConocoPhillips (COP); Corning Inc. (GLW); Devon Energy Corp. (DVN); EMC Corp. (EMC); Exxon Mobil Corp. (XOM); Ford Motor Co. (F); Gateway, Inc. (GTW); General Electric Co. (GE); Halliburton Co. (HAL); Hewlett-Packard Co. (HPQ); Johnson & Johnson (JNJ); JPMorgan Chase & Co. (JPM); Kohl's Corp. (KSS); LSI Logic Corp. (LSI); Micron Technology, Inc. (MU); Motorola, Inc. (MOT); Noble Corp. (NE); Occidental Petroleum Corp. (OXY); Office Depot Inc. (ODP); Pfizer Inc. (PFE); Phelps Dodge Corp. (PD); Pulte Homes, Inc. (PHM); Qwest Communications International Inc. (Q); Schlumberger Ltd. (SLB); Solectron Corp. (SLR); Sovereign Bancorp, Inc. (SOV); Time Warner, Inc. (TWX); Valero Energy Corp. (VLO); and Verizon Communications, Inc. (VZ).

2005, Nasdaq needed to obtain Board approval for a longer pilot. Having obtained such approval, Nasdaq is now filing to extend the pilot through February 28, 2006.⁹

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,¹⁰ in general, and with Section 15A(b)(5) of the Act,¹¹ in particular, in that the proposed rule change, as amended, 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. Nasdaq states that the proposed rule change, as amended, will continue a pilot to make a liquidity provider credit available to all market participants that opt to provide liquidity through Nasdaq or Brut to support execution in any of forty stocks included in the pilot program.

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

Nasdaq does not believe that the proposed rule change, as amended, 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

Nasdaq states that written comments were neither solicited nor received.

⁹ The change proposed by this filing applies to NASD members that use the Nasdaq Market Center and Brut; in SR-NASD-2005-155, Nasdaq proposes to make the same change applicable to non-members that use Brut.

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

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

The foregoing rule change, as amended, is subject to Section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4¹³ thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

Accordingly, the proposal is effective upon Commission receipt of the filing. 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.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-154 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ The effective date of the original proposed rule change is December 28, 2005, and the effective date of Amendment No. 1 is December 30, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on December 30, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-154. 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-2005-154 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).