

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53325; File No. SR-NASD-2006-021)

February 16, 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 Extend the Time for Non-Member Broker/Dealers to Access the Brut and INET Facilities

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 February 7, 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. On February 8, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders it effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq revised the proposed rule text in order for it to correspond with the existing language of NASD Rule 4901.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ Nasdaq has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion infra Section III.

Nasdaq proposes to continue to provide, through May 1, 2006, broker/dealers that are not members of NASD access to Nasdaq's Brut and INET Facilities. Nasdaq intends to implement the proposed rule change immediately. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in [brackets].

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4901. Definitions

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

(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 [February 8, 2006] May 1, 2006, the term "Participant" shall also include non-NASD broker/dealers that desire to use the System and otherwise meet all other requirements for System participation.

(j) through (w) No Change

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4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) through (5) No Change

(6) In addition to the above, on or before [60 days after the System becomes a facility of Nasdaq] May 1, 2006, all System Participants shall be members of the Association.

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The text of the proposed rule change, as amended, is also available on Nasdaq's Internet Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the current NASD rules, broker/dealers that are not members of NASD may use Nasdaq's Brut and INET systems until February 8, 2006. Nasdaq proposes to modify this provision to allow non-NASD member broker/dealers to use the Brut and INET systems through May 1, 2006. This extension is intended to allow these non-NASD member broker/dealers to have continued access to the Brut and INET systems while they take actions to become members of The Nasdaq Stock Market LLC ("Nasdaq Exchange").⁷

⁷ The Commission recently approved Nasdaq's application for one of its proposed subsidiaries, The Nasdaq Stock Market LLC, to be registered as a national securities exchange under Section 6 of the Act. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) ("Nasdaq Exchange Approval Order").

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(6) of the Act,⁹ in particular, in that it is designed 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 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 neither solicited nor received comments on the proposal.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for thirty 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.¹²

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² Pursuant to Rule 19b-4(f)(6)(iii), Nasdaq has given the Commission 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 on which Nasdaq filed

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to thirty days after the date of filing. Nasdaq requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow continued and uninterrupted access to Nasdaq's Brut and INET trading facilities for non-NASD member broker/dealers and their customers while such broker/dealers take steps to become members of the Nasdaq Exchange before it becomes operational as a national securities exchange. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow non-NASD member broker/dealers to continue to participate in Nasdaq's Brut and INET systems without interruption. The Commission notes that by May 1, 2006, all Brut and INET participants must either be NASD members or Nasdaq Exchange members, contingent on whether the Nasdaq Exchange has begun operating as a national securities exchange. In addition, the Commission notes that members of NASD, as well as broker/dealers that are currently not NASD members, will be able to apply to become a Nasdaq Exchange member during the period of transition before the Nasdaq Exchange becomes operational.¹⁴ For these reasons, the Commission designates the proposed rule change as effective and operative immediately.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such

the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ See Nasdaq Exchange Approval Order, 71 FR at 3554 (referring to recently approved Nasdaq Exchange Rule 1013(a)(6)).

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

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁶

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-2006-021 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-021. 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

¹⁶ The effective date of the original proposed rule change is February 7, 2006, and the effective date of Amendment No. 1 is February 8, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on February 8, 2006, the date on which Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office 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-2006-021 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.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).