

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53440; File No. SR-NASD-2006-020)

March 8, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Odd Lot Transactions in the Nasdaq Market Center

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 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, II, and III below, which Items have been prepared by Nasdaq. On February 27, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The NASD filed the proposal, as amended, pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Partial Amendment dated February 27, 2006 (“Amendment No. 1”). In Amendment No. 1, Nasdaq clarified the rationale behind the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes to amend Rule 4706(d) to permit ITS/CAES Market Makers to enter orders in increments less than 100 shares. Nasdaq expects to implement the proposed rule change, as amended, on March 27, 2006.<sup>6</sup>

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>7</sup>

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**4706 Order Entry Parameters**

(a) – (c) No Change.

(d) Order Size —

(1) [In Nasdaq-listed securities, a] Any order in whole shares up to 999,999 shares may be entered into the Nasdaq Market Center for normal execution processing.

(2) [Orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots.] Orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

(e) No Change.

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<sup>6</sup> Originally, Nasdaq stated that it would implement the proposed rule change on March 6, 2006. Later, the implementation date was changed to March 27, 2006. Telephone conversation between Jeffrey Davis, Associate Vice President, Nasdaq, and Natasha Cowen, Attorney, Division of Market Regulation, Commission, on March 7, 2006.

<sup>7</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasdaq.com](http://www.nasdaq.com). Prior to the date when The NASDAQ Stock Market LLC (“NASDAQ LLC”) commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

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

Nasdaq proposes to amend Rule 4706(d) to permit ITS/CAES Market Makers to enter orders in increments less than 100 shares. This functionality has been available for several years and is widely utilized in the trading of Nasdaq-listed securities. Nasdaq has not previously made this functionality available for the trading of ITS Securities due to the limitation in the Intermarket Trading System ("ITS") that prohibits the sending of commitments in increments smaller than 100 shares. Nasdaq has identified a method for permitting Nasdaq participants to enter trading interest into the Nasdaq Market Center in odd-lot increments and for the Nasdaq Market Center to execute transactions in odd-lot increments while leaving undisturbed the ITS limitation requiring participation in round-lot multiples.<sup>8</sup> In other words, Nasdaq will program its own system to use both round lots and odd lots, and continue to comply with this ITS restriction by programming its system not to send ITS commitments in increments smaller than 100 shares.

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<sup>8</sup> See Amendment No. 1.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(6) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change, as amended, does not:

- (1) significantly affect the protection of investors or the public interest;
- (2) impose any significant burden on competition; and
- (3) become operative for 30 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

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<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

public interest, it has become effective pursuant to Section 19b(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>13</sup> the Nasdaq provided the Commission with 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 of the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate the 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.<sup>14</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-020 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes of calculating the 30-day operative delay and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on February 27, 2006, when Amendment No. 1 was filed.

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-2006-020. 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-2006-020 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.<sup>15</sup>

Nancy M. Morris  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).