

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53675; File No. SR-NASD-2006-049)

April 18, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Brut's Routing Order Process

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 April 13, 2006, the National Association of Securities Dealers, Inc., 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, II and III below, which items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as a "non-controversial" rule change pursuant to 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

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

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4714. Routing – Nasdaq-Listed Securities

(a) – (b) – No Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(c) In the event an order becomes non-marketable while it is in the execution queue, or the order is not marketable upon return to Nasdaq, the order shall be included in the Nasdaq Market Center book (if consistent with the order's time in force condition) in accordance with the time priority established by the time-stamp assigned to the order when it was initially submitted to the Nasdaq Market Center. Once an order is placed in the Nasdaq Market Center book it shall not be routed outside the Nasdaq Market Center unless otherwise instructed.

(d) – (f) No Change

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4905. Order Processing

(a) **Brut Book Order Process** – No Change

(b) **Brut Order Routing Process**

(1) No Change

(2) With the exception of Thru Brut and Directed Cross Orders that specifically direct to which market center an order is to be routed, [orders routed out of the Brut System to other market centers for potential execution are generally delivered to other market centers in price/size priority. If the routed order is smaller in size than the total combined displayed share amounts of accessible market centers at the best price level, the Brut System delivers the routed order to the available market centers in price/size priority. If the routed order is larger than the total combined displayed share amounts of accessible market centers at the best price level, the Brut System delivers over-sized orders to each displayed market center's quote in proportion to the individual market's center share of that total displayed share amount.] if an order for a security is not executed in its entirety in the Brut System and such order is designated for routing, the order

(or the unfilled portion thereof — referred to hereinafter as an “order”) shall be processed as follows:

(A) The order shall be routed to other markets accessible through the Brut System router at a price better than the Orders available in the Brut System as a limit order. Routed orders shall be executed pursuant to the rules and regulations of the destination market.

(B) In the event an order routed from the Brut System to another market is not executed in its entirety, the remaining portion of the order shall be returned to the Brut System and shall be eligible for execution, or re-routing, if marketable. A market order that is converted to a limit order for routing will become a market order again upon return to the Brut System.

(C) In the event an order becomes non-marketable while it is in the execution queue, or the order is not marketable upon return to the Brut System, the order shall be included in the Brut System book (if consistent with the order’s time in force condition) in accordance with the time priority established by the time-stamp assigned to the order when it is returned to the Brut System. Once an order is placed in the Brut System book it shall not be routed outside the Brut System unless otherwise instructed.

(D) An order that has been routed to another market shall have no time standing in the Brut System execution queue relative to other orders in the Brut System. A request from a Brut Participant to cancel an order while it is outside the Brut System shall be processed subject to the applicable rules of the market to which the order has been routed.

[(3) In the event an order routed to another market center is not executed in its entirety, the remaining portion of the order shall be returned to the System and, if upon return the order is

marketable against a System order then priced at the NBBO, it will be subjected to Brut Book Process prior to any further routing.

(4) An order that has been routed to another market shall have no time standing in the System execution queue relative to other orders in the System. A request from a Participant to cancel an order while it is outside the System shall be processed subject to the applicable rules of the market center to which the order has been routed.]

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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

Nasdaq represents that the purpose of the proposed rule change is to modify the rule language pertaining to routing to external venues through the Brut service to conform more closely with the rule language pertaining to routing to external venues through the Nasdaq Market Center.⁴ The one corresponding change to Nasdaq's routing language is necessary for clarification purposes so as to more accurately reflect the current routing process and does not

⁴ See NASD Rule 4714.

indicate an actual system change.⁵ Currently, Brut's rules describe the algorithm used for determining to which routing destination and for how many shares Brut will send orders. Nasdaq believes that this limits Brut's ability to adjust its routing algorithm to achieve optimal routing results.

By adopting language more consistent with Nasdaq's routing rules, Nasdaq represents that Brut will have more flexibility to adjust its routing algorithm based on a number of factors, including: speed, certainty of execution, potential of reserve shares, and cost. As such, Nasdaq believes that the proposed rule change would promote uniformity between Nasdaq-operated trading systems and provide the capacity to adopt the same routing logic in anticipation of the eventual integration of these systems into a single trading platform.

The rule differs slightly from Nasdaq's routing rules, however, in that the Brut system uses the timestamp of an order when it is returned to the Brut system for ranking the order on the book whereas the Nasdaq Market Center uses the order's original timestamp. Nasdaq believes that this difference is not significant and that it would be too costly to conform this feature in the Brut system in light of the imminent integration of the systems.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general and with Section 15A(b)(6) of the Act,⁷ in particular, in that it is designed to foster coordination and cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Nasdaq

⁵ See NASD Rule 4706.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(6).

believes the proposal is consistent with this obligation because it is designed to improve the routing process by making it more efficient and offering subscribers more routing options.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Nasdaq has designated the foregoing rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder⁹ because the rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) 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.

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

⁸ 15 U.S.C. 78s(b)(3)(A).

foregoing, including whether the proposed rule change 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-2006-049 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2006-049. 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 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

⁹ 17 CFR 240.19b-4(f)(6).

available publicly. All submissions should refer to File Number SR-NASD-2006-049 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

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).