

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54269; File No. SR-NASD-2006-079)

August 3, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding Pricing for Non-Members Using Nasdaq's 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 June 30, 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 July 25, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. On July 26, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

Nasdaq proposes to modify the pricing for non-members using Nasdaq's Brut and Inet Facilities. The filing will apply to these non-members the same pricing change that Nasdaq is instituting for members.³ Nasdaq seeks approval to implement the proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54268 (August 3, 2006) (File No. SR-NASD-2006-078).

retroactively as of July 3, 2006. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁴

7010. System Services

(a) – (h) No change.

(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing

(1) – (7) No change.

(8) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR-NASD-2005-019, SR-NASD-2005-035, SR-NASD-2005-048, SR-NASD-2005-071, SR-NASD-2005-125, SR-NASD-2005-137, SR-NASD-2005-154, SR-NASD-2006-013, SR-NASD-2006-023, SR-NASD-2006-031, [and] SR-NASD-2006-057, and SR-NASD-2006-078 and as applied to non-members by SR-NASD-2005-020, SR-NASD-2005-038, SR-NASD-2005-049, SR-NASD-2005-072, SR-NASD-2005-126, SR-NASD-2005-138, SR-NASD-2005-155, SR-NASD-2006-014, SR-NASD-2006-024, SR-NASD-2006-032, [and] SR-NASD-2006-058, and SR-NASD-2006-079.

(j) - (y) No change.

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⁴ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasd.com, as amended by SR-NASD-2006-057 (May 1, 2006) on an immediately effective basis and as further proposed to be amended by SR-NASD-2006-058 (May 1, 2006). If SR-NASD-2006-058 is not approved by the Commission, Nasdaq will file a conforming amendment to SR-NASD-2006-079.

The NASDAQ Stock Market LLC (“NASDAQ LLC”) will not file conforming changes to its rules with regard to order execution and routing by non-members, since persons that are not members of NASDAQ LLC will not be permitted to use its order execution and routing systems.

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 had received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III 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-2006-078⁵ Nasdaq increased its liquidity provider credit for NASD members using the Nasdaq Market Center and Nasdaq's Brut and Inet Facilities (the "Nasdaq Facilities") to trade securities listed on the New York Stock Exchange, the American Stock Exchange, and other exchanges. Specifically, the change applies to securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds ("Covered Securities").⁶ Nasdaq currently offers a liquidity provider credit of \$0.0005 per share to firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of more than 5 million shares of liquidity accessed, provided, or routed. Pursuant to SR-NASD-2006-078, effective July 3, 2006, Nasdaq will offer an increased credit of \$0.0006 per share for firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of 10 million or more shares of liquidity

⁵ See Securities Exchange Act Release No. 54268 (August 3, 2006) (File No. SR-NASD-2006-078).

⁶ Exchange-Traded Funds listed on venues other than Nasdaq are subject to the same fee schedule as Nasdaq-listed securities, under NASD Rule 7010(i)(1).

provided. Nasdaq believes the change should encourage firms to make greater use of the Nasdaq Facilities for trading Covered Securities, particularly with regard to using the Nasdaq Facilities to provide liquidity to support executions.

Nasdaq is submitting this filing to apply these changes to non-members using Nasdaq's Brut and Inet Facilities, because Nasdaq anticipates that these non-members will be allowed to continue to use these facilities until NASDAQ LLC begins to operate as a national securities exchange.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ in particular, in that it 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. The proposed rule change, as amended, applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use Brut, Inet, and the Nasdaq Market Center. Accordingly, Nasdaq believes that the proposed rule change, as amended, promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

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.

⁷ 15 U.S.C. 78q-3.

⁸ 15 U.S.C. 78q-3(b)(5).

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. 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-2006-079 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-2006-079. 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 publicly available. All submissions should refer to File Number SR-NASD-2006-079 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.⁹ Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,¹⁰ which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using Nasdaq's Brut and Inet Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective June 30, 2006, pursuant to SR-NASD-2006-078.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that the proposed fees for non-NASD members are

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78q-3(b)(5).

identical to those in SR-NASD-2006-078, which implemented those fees for NASD members and which became effective as of June 30, 2006. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹¹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-2006-079) and Amendments Nos. 1 and 2 thereto be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).