

comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current \$150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to \$200, while the \$300 fee for higher volume users is being increased to \$375. Nasdaq is filing this proposed rule change to apply the foregoing changes to non-NASD members subscribing to these products.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> 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 applies to non-members a fee change that is being implemented for NASD members. Accordingly, the proposed rule change promotes an equitable allocation of fees between members and non-members using these services.

### 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-095 on the subject line.

<sup>7</sup> 15 U.S.C. 78o-3

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

### 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 NASD-2006-095. 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 the filing also will be available for inspection and copying at the principal offices 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 available publicly. All submissions should refer to File Number SR-NASD-2006-095 and should be submitted on or before October 23, 2006.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>10</sup> which requires that the rules of a 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.

<sup>9</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

The Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective on August 1, 2006, pursuant to SR-NASD-2006-094.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-NASD members are identical to those in SR-NASD-2006-094, which implemented those fees for NASD members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in NASD's fee schedule by applying simultaneously the same pricing schedule for NASD members and non-NASD members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR-NASD-2006-095), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54499; File No. SR-NASD-2006-094]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding Fees for the New Nasdaq Workstation and Weblink ACT

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

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. Nasdaq amended the proposed rule change on September 20, 2006.<sup>3</sup> Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> Nasdaq has designated this proposal as establishing or changing a member due, fee or other charge, which renders the proposed rule change 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.

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

Nasdaq proposes to modify fees for the New Nasdaq Workstation ("NNW") and Weblink ACT. Nasdaq will implement the proposed rule change on August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at <http://www.nasdaq.com>.<sup>6</sup>

### 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.

<sup>3</sup> See Amendment No. 1. The effective date of the original proposed rule change is August 1, 2006 and the effective date of the amendment is September 20, 2006. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on September 20, 2006, the date Nasdaq filed Amendment No. 1. See Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. Nasdaq is filing this proposed rule change because the NNW and Weblink ACT are used with respect to the quotation, execution, and trade reporting system operated by Nasdaq with respect to non-Nasdaq securities. The NASDAQ Stock Market LLC ("Nasdaq Exchange") is also filing a comparable modification to Nasdaq Exchange Rule 7015.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Nasdaq is amending Rule 7010 to change fees associated with its Web-based NNW and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II ("NWII") last year, the fee for the NNW has been \$435 per user per month, plus \$90 per month for data feeds included with the NNW, for a total cost of \$525 per user per month. Nasdaq is now reducing the fee to \$475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility ("TRF") operated by Nasdaq and NASD,<sup>7</sup> as well as access to ACT functionality still offered by Nasdaq under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, Nasdaq is proposing to increase the comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current \$150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to \$200, while the \$300 fee for higher volume users is being increased to \$375.

Nasdaq is also amending Rule 7010(g), which has historically contained the fees for the trade reporting services of Nasdaq, to reflect the Nasdaq Exchange's commencing operations for trading of securities listed on the Nasdaq Exchange, the TRF's commencing operations for reporting of

<sup>7</sup> Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

Nasdaq-listed securities, and Nasdaq's continued operation, for a transitional period, as the quotation and trade reporting facility of NASD for non-Nasdaq securities. Nasdaq is amending Rule 7010(g) to remove fees and credits associated with reporting of Nasdaq-listed stocks, which are now contained in the NASD Rule 7000B Series, as well as fees for risk management services now provided by the Nasdaq Exchange. During the transitional period before the Nasdaq Exchange begins to trade non-Nasdaq stocks, Rule 7010(g) continues to govern fees and credits for reporting of non-Nasdaq listed securities to the ACT system operated by Nasdaq. Accordingly, Nasdaq is amending the rule to eliminate fees for services that are no longer offered by Nasdaq, as well as removing references to the Nasdaq Market Center, a term that is no longer used to describe trade reporting services.

Several other portions of the NASD Rule 7000 Series reference fees for services that, following the Nasdaq Exchange's operational date, will no longer be offered by NASD or Nasdaq. These provisions become inactive after August 1, 2005. NASD will file a cleanup proposed rule change to remove fees no longer charged by NASD at a later date.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Sections 15A(b)(5) of the Act,<sup>9</sup> 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 NASD operates or controls. The proposed rule change reflects demand patterns for NNW and Weblink ACT and is designed to ensure that as between the products, fees are allocated appropriately to allow recovery of costs.

#### 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.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a member due, fee, or other charge imposed by NASD. 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.<sup>12</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 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-2006-094 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-2006-094. 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 available publicly. All submissions should refer to File Number SR-NASD-2006-094 and should be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54491; File No. SR-NYSE-2005-09]

### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Rule 409 Regarding Statements of Accounts to Customers and Proposed New Rule 409A Regarding SIPC Disclosure

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 14, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> In Amendment No. 1, NYSE withdrew its proposal to amend NYSE Rule 409(a), which would have permitted institutional customers conducting a Delivery versus Payment and Receive versus Payment ("DVP/RVP") business to opt out of receiving customer account statements. NYSE refiled this proposal in File No. SR-NYSE-2005-90.

change.<sup>4</sup> 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 Exchange is proposing to amend NYSE Rule 409(e) to require that each statement of account sent to a customer include a legend advising the customer to promptly report any inaccuracy or discrepancy in that person's account to his or her brokerage firm. If the account is subject to a clearing agreement pursuant to NYSE Rule 382, amended NYSE Rule 409(e) would require the legend to advise that the customer's notification be sent to both the introducing firm and the clearing firm. The legend also would need to advise the customer that he or she should reconfirm any oral communications with either the clearing or introducing firm in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA). The Exchange is also proposing to adopt a new rule, NYSE Rule 409A, which would require member organizations to advise each customer in writing, upon the opening of an account and at least annually thereafter, that he or she may obtain information from the Securities Investor Protection Corporation (SIPC). Proposed Rule 409A would require the written advisories to include SIPC's Web site address and telephone number, and, if the account is subject to a clearing agreement pursuant to NYSE Rule 382, the rule would permit its requirements to be delegated to either the introducing firm or the clearing firm.

The text of the proposed rule change is set forth below. Additions are *italicized*. Deletions are [bracketed].

#### Rule 409

##### Statements of Accounts to Customers

- (a) through (d)—No change.  
 (e) Each statement of account sent to a customer pursuant to this rule shall *include the following*:

(1) [bear a] A legend [as follows] that reads: "A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request."

(2) A legend that *advises customers to report promptly any inaccuracy or discrepancy in that person's account to*

<sup>4</sup> In Amendment No. 2, NYSE proposed additional changes to NYSE Rule 409(a) and proposed new NYSE Rule 409A, which are discussed below.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> See footnote 3, *supra*.