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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53787; File No. SR-NASD-2006-053]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Establish Additional Routing Options in the INET System for Securities Listed on the New York Stock Exchange or the American Stock Exchange

May 11, 2006.

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 April 21, 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 and II below, which items have been prepared by Nasdaq. On May 5, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> 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.

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

Nasdaq proposes to establish two additional routing options in its INET System for orders in securities listed on the New York Stock Exchange LLC (“NYSE”) or the American Stock Exchange LLC (“AMEX”).

The text of the proposed rule change is below. Proposed new language is *underlined*; proposed deletions are in [brackets].<sup>6</sup>

4956. Routing

(a) INET Order Routing Process.

(1) The INET Order Routing Process shall be available to Participants from 7 a.m. to 8 p.m. Eastern Time, and shall route orders as described below:

(A) Exchange-Listed Routing Options.

The System provides [six] *eight* routing options for orders in exchange-listed securities. Of these [six] *eight*, [only three] *five*—DOT Immediate, DOT Alternative, *DOT Alternative 2, Reactive Only DOT* and DOT Nasdaq—are available for orders ultimately sought to be directed to either the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The [six] *eight* System routing options for NYSE and/or Amex listed orders are:

(i) DOT Immediate (“DOTI”)—under this option, after checking the INET System for available shares, orders are sent directly to the NYSE or the AMEX as appropriate. When checking the INET book, the System will seek to execute at the better price of either the limit price specified in the order, or the best price displayed at that time at the NYSE. If no liquidity is available in the INET System, the order will be routed directly to the NYSE or AMEX at the limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this option.

(ii) DOT Alternative (“DOTA”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution before the destination exchange. Any unexecuted portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order’s original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

Only limit orders may be used with this strategy.

(iii) DOT Alternative 2 (“DOTA2”)—under this option, orders first check the INET book and then other market centers for potential execution. Any portion of the order that remains unexecuted is posted on the INET book until the expiration of the Nasdaq-specified time period at either the order’s limit price or, if the limit price would lock or cross the market, at the highest bid or lowest offer that would not lock the market. At the expiration of the period specified by Nasdaq (which will not exceed 30 seconds), any remaining unexecuted portion of the order is sent to the NYSE or AMEX, as appropriate (the destination exchange). DOTA2 orders entered prior to the destination exchange’s opening time will be displayed on the INET book until immediately prior to the opening time and then sent to the destination exchange. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

(iv) Reactive Only DOT (“DOTR”)—under this option, orders first check the INET book and then other market centers and the destination exchanges (the NYSE or the AMEX, as appropriate) for potential execution. Any portion of the order that remains unexecuted is posted on the INET book (unless they were sent to the destination exchange). Subsequently, if an order that was posted on the INET book became locked or crossed by another accessible market center or destination exchange, the System will route the order to the locking or crossing market center or destination exchange. Whenever an order is sent to the destination exchange, it is sent at its original price for potential display and/or execution. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

[[iii]] (v) Reactive Electronic Only (“STGY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. With the exception

<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, Nasdaq revised the proposed rule text to specify that the Nasdaq-specified time period under the proposed DOT Alternative 2 routing option would not exceed 30 seconds and added a representation to the purpose section regarding communicating changes to the Nasdaq-specified time period to INET users promptly.

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

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

<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual that can be found at <http://www.nasd.com>.

of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(iv)] (vi) Electronic Only Scan (“SCAN”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(v)] (vii) Aggressive Electronic Only (“SPDY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. Market orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a *de minimis* exception to the trade-through rule set forth in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

[(vi)] (viii) DOT Nasdaq (“DOTN”)—under this option, after checking the

INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the Nasdaq Market Center and/or Nasdaq’s Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order’s original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

(B) and (C) No change.

\* \* \* \* \*

## 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 received on the proposal. 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

Users of Nasdaq’s INET System are currently able to select (subject to their best execution obligations to their own customers, if applicable) from among six different routing options for orders in securities listed on the NYSE or the AMEX. Some of the existing user choices instruct INET to route such orders to the NYSE or the AMEX, while others instruct INET to route to a subset of market centers.

Nasdaq is proposing to give INET System users two additional options for how and when INET should route their orders to the NYSE or the AMEX (the “destination exchanges”). Under the proposed DOT Alternative 2 option, the INET System first checks the INET book and then other market centers (but not the destination exchanges) for potential executions. Any portion of the order that remains unexecuted is then posted on the INET book at the order’s limit price. (If the limit price would lock or cross the market, the order is posted at

the highest price for buy orders or lowest price for sell orders that would not lock or cross the market.) At the posted order’s expiration time, any portion that still remains unexecuted is sent to the NYSE or the AMEX for display or execution at the original limit price. The length of time from the posting of an order to its expiration will be set by Nasdaq for all orders that select the DOT Alternative 2 option. The expiration time is currently set at three seconds from the time of order posting, but in response to INET System users’ preferences, Nasdaq may adjust it from time to time in the future. Nasdaq represents that it will promptly communicate to INET System users any adjustments it makes to the length of this time period.

The proposed Reactive Only DOT order is similar to the Reactive Electronic Only order, but it also includes the manual NYSE and AMEX markets in its initial routing. Under the Reactive Only DOT option, the INET System first checks the INET book and then other market centers and the destination exchanges (the NYSE and the AMEX) for potential executions. Any portion of the order that remains unexecuted is posted on the INET book. (Of course, any portion of the order that during the checking process had appeared marketable at the destination exchange and was sent there, but then failed to execute, would be displayed at that exchange and not in the INET book.) If any accessible market center or destination exchange subsequently locks or crosses the order, INET will route it to the locking/crossing market center or exchange. If an order is sent to the destination exchange but fails to execute completely, the unexecuted portion will be displayed by that exchange and will not return to INET for display purposes. Nasdaq notes that the new choices will give users of the INET System added flexibility when handling orders for NYSE- and AMEX-listed securities. Nasdaq believes that such flexibility will undoubtedly help users as they seek to achieve best execution of orders. The proposal does not remove or change any of the INET System’s existing functions, and its users will remain free not to take advantage of the new choices that are being made available to them.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section

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

15A(b)(6) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, Nasdaq notes that the proposal offers users of the INET System additional flexibility in selecting the most appropriate routing strategy for their orders.

#### *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.

#### *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 amended, as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> 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. Nasdaq has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay for the proposed rule change, as amended, is consistent with the protection of investors and the public interest because the proposal would give INET System users two, additional options for routing their orders and, therefore, should be implemented without delay. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, 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>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, 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-2006-053 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-2006-053. 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 Nasdaq. All

<sup>12</sup> The effective date of the original proposed rule change is April 21, 2006 and the effective date of Amendment No. 1 is May 5, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 5, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-053 and should be submitted on or before June 7, 2006.

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

**Jill M. Peterson,**

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53791; File No. SR-NYSE-2006-33]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pilot Program Beginning on May 12, 2006 and Ending on October 31, 2006 or Sooner, To Implement Certain Hybrid Market Changes and Amend Certain Changes to Approved Hybrid Market Rules**

May 11, 2006.

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 May 10, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 from interested persons.

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

The proposed rule change consists of amendments to NYSE rules governing trading in pilot securities ("Pilot

<sup>13</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.

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

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

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).