

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-2006-058 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-2006-058. 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 Section, 100 F Street, NE, Washington, DC 20549. 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-2006-058 and should be submitted on or before August 17, 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 believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,<sup>10</sup> 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 the Nasdaq Market Center and 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 May 1, 2006, pursuant to SR-NASD-2006-057.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2006-057, which implemented those fees for NASD members and which became effective as of May 1, 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. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as amended, (File No. SR-NASD-2006-058) is approved on an accelerated basis.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> *Id.*

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

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54160; File No. SR-NASD-2006-057]

#### 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 the Pricing Schedule for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities

July 17, 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 1, 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 June 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<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 due, fee, or other charge, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice, as amended, 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

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities (the "Nasdaq Facilities"). Nasdaq implemented the proposed rule change on May 1, 2006.

The text of the proposed rule change, as amended, is available on the NASD's

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

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

<sup>3</sup> In Amendment No. 1, Nasdaq amended proposed Rule 7010(i)(7) to indicate that when a market participant enters an order into Nasdaq's Brut or INET systems that is sent to a Nasdaq Market Center market participant that charges an access fee to Brut or INET, the market participant entering the order shall be charged (i) the applicable execution fee of the Nasdaq Facilities, or (ii) in the case of executions against Quotes/Orders at less than \$1.00 per share, a pass-through of the access fee charged to Brut or INET. Nasdaq also made conforming changes to the description of the proposed rule change.

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

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

Web site (<http://www.nasd.com>), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

## 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 is proposing to reduce its fees for routing orders from its three trading platforms—the Nasdaq Market Center, Brut, and INET—to the American Stock Exchange (“Amex”). Specifically, whereas Nasdaq now charges \$0.01 per share executed for routing such orders, the fee will be reduced to \$0.003 per share executed. However, an additional fee of \$0.01 would be charged in cases where the Amex specialist charges a fee to execute the order (which generally occurs when the order remains on the specialist book for more than a certain amount of time before being executed).

Nasdaq is also broadening the conditions under which a member may qualify for a reduced fee of \$0.0028 per share executed to access liquidity and route orders in Nasdaq-listed securities and exchange-traded funds. Currently, members qualify for the \$0.0028 fee (a reduction from the otherwise applicable fee of \$0.003 per share executed) if they (i) provide an daily average of more than 30 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 50 million shares of liquidity during a month. With the proposed rule change, the reduced fee would also be available to members that (i) provide a daily average of more than 20 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 60 million shares of liquidity during a month. Thus, the change will broaden the availability of the reduced fee to members that provide comparatively less liquidity but access and/or route comparatively more liquidity.

Nasdaq is also adding rule text to clarify the fee to be charged with respect

to orders that are entered into Brut or INET and then sent to a Nasdaq Market Center participant that charges an access fee to Brut or INET. When the execution price of the stock is greater than \$1.00, Nasdaq charges its usual order execution fee of \$0.0028 or \$0.003, which will generally approximate the access fee charged to Brut or INET. In the case of stocks price at \$1.00 or less, Nasdaq's order execution fee of 0.1% of the total transaction cost would not allow it to recoup the access fee charged to Brut or INET. Accordingly, in those cases, Nasdaq passes through the ECN access fee to the market participant that entered the order into Brut or INET.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general, and with Section 15A(b)(5) of the Act,<sup>7</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 reduces fees for routing to Amex in most cases, broadens the availability of a reduced fee to access liquidity and route orders, and clarifies the fee charged with respect to orders entered into Brut or INET and sent for execution to a Nasdaq Market Center participant that charges an access fee.”

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it

appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>10</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-2006-057 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-2006-057. 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 Section, 100 F Street, NE., Washington, DC 20549. 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

<sup>10</sup> The effective date of the original proposed rule change is May 1, 2006 and the effective date of the amendment is June 12, 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 June 12, 2006, the date on which the NASD submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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-2006-057 and should be submitted on or before August 17, 2006.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54186; File No. SR-NASD-2006-081]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NASD Rule 5150 Relating to Trade-Throughs

July 20, 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 July 11, 2006, the National Association of Securities Dealers, Inc. (“NASD”) 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 the NASD. 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 NASD is proposing to adopt, in anticipation of The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) beginning to trade non-Nasdaq exchange-listed securities on an unlisted trading privileges (“UTP”) basis, new NASD Rule 5150 to require an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to the NASD. Below is the text of the proposed

rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### 5000. Other Nasdaq and NASD Markets

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##### 5150. Applicability of Trade-Through Rule to Nasdaq Market Makers

*An NASD member shall comply with the provisions of Rule 5262 (Trade-Throughs), as if it were an ITS/CAES market maker, for purposes of transactions that are reported to NASD in any ITS Security, as that term is defined in Rule 5210(c), in which such member is registered as a market maker with The NASDAQ Stock Market LLC. For purposes of this Rule 5150, the term “Block Transaction” under Rule 5262(a)(7)(B) shall mean any trade that involves 10,000 or more shares of an ITS security or a quantity of any such security having a market value of \$200,000 or more.*

\* \* \* \* \*

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

In its filing with the Commission, the NASD 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. The NASD 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

The proposed rule change is filed in anticipation of the Nasdaq Exchange operating as a national securities exchange for purposes of trading non-Nasdaq exchange-listed securities on a UTP basis. The NASD is proposing a new rule to require an NASD member that is registered as a market maker with the Nasdaq Exchange in an ITS Security, as defined Rule 5210(c), to comply with the provisions of NASD Rule 5262 (Trade-Throughs) with respect to that security for trades reported to the NASD.

#### Background

On July 11, 2005, the NASD filed with the Commission proposed rule change SR-NASD-2005-087, which, among other things, proposed amendments to

the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, NASD By-Laws and NASD rules to reflect The Nasdaq Stock Market, Inc.’s (“Nasdaq”) separation from the NASD upon the Nasdaq Exchange’s operation as a national securities exchange.<sup>3</sup> On June 15, 2006, the NASD filed Amendment No. 1 to SR-NASD-2005-087, which, among other things, proposed the NASD’s and Nasdaq’s implementation strategy for Nasdaq’s operation as a national securities exchange. On June 30, 2006, the Commission approved SR-NASD-2005-087, as amended, the effective date of which will be the date upon which the Nasdaq Exchange operates as an exchange for Nasdaq-listed securities.<sup>4</sup> The NASD intends to file a second proposed rule change proposing an NASD facility for over-the-counter quoting and trading of non-Nasdaq exchange-listed securities, to be made available when the Nasdaq Exchange begins to trade such securities on a UTP basis.

Currently, NASD Rule 5262, also known as the Trade-Through Rule, restricts a member registered as an NASD ITS/CAES Market Maker<sup>5</sup> in an ITS/CAES security<sup>6</sup> from purchasing or selling such security, whether as principal or agent, at a price that is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker. Current NASD Rule 5262 applies to all over-the-counter trading by NASD ITS/CAES Market Makers in that security, including trades executed outside of CAES and reported to the NASD.

The Nasdaq Exchange established a substantially similar rule, Nasdaq Rule 5262, which, by its terms, would apply to market makers registered with the Nasdaq Exchange (“Nasdaq market

<sup>3</sup> The Commission approved the Nasdaq Exchange application on January 13, 2006. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>4</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

<sup>5</sup> For purposes of NASD Rule 5262, “ITS/CAES Market Maker” is defined in NASD Rule 5210(e) as a member that is registered as a market maker for the purposes of participating in the Intermarket Trading System (“ITS”) through the Computer Assisted Execution System (“CAES”) with respect to one or more specified ITS securities in which the member is then actively registered. The term also includes members that meet the definition of electronic communications network or alternative trading network. CAES is an automated system that is currently operated by The Nasdaq Stock Market, Inc. NASD members can direct agency and principal orders in exchange-listed securities to CAES for automated execution in the third market.

<sup>6</sup> The term “ITS Security” is defined in NASD Rule 5210(c) as “any security which may be traded through the [ITS] System by an ITS/CAES Market Maker.”

<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.