

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53082; File No. SR-NASD-2005-155]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Modify the Pricing for Non-Members Using Nasdaq's Brut Facility

January 9, 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 December 28, 2005, 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 December 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time 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 Facility ("Brut"). Nasdaq requests approval to implement the proposed rule change, as amended, retroactively as of January 1, 2006, for a pilot period running through February 28, 2006. The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

\* \* \* \* \*

#### 7010. System Services

(a)-(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution

(1)-(5) No change.

(6) The fees applicable to non-members using Nasdaq's Brut Facility 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,

and SR-NASD-2005-071, SR-NASD-2005-125, [and] SR-NASD-2005-137, and SR-NASD-2005-154, 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, [and] SR-NASD-2005-138, and SR-NASD-2005-155.

(j)-(v) No change.

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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, as amended, and discussed any comments it 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-2005-137 and SR-NASD-2005-138,<sup>4</sup> Nasdaq created a pilot program under which liquidity providers (*i.e.*, market participants that post quotes or orders that are accessed by incoming orders)<sup>5</sup> may receive a credit of \$0.0005 per share executed with respect to forty stocks listed on the New York Stock Exchange.<sup>6</sup>

<sup>4</sup> Securities Exchange Act Release Nos. 52939 (December 9, 2005), 70 FR 75229 (December 19, 2005) (SR-NASD-2005-137) and 52938 (December 9, 2005), 70 FR 75231 (December 19, 2005) (SR-NASD-2005-138).

<sup>5</sup> Telephone conversation between John Yetter, Associate General Counsel, Exchange, and Michou Nguyen, Attorney, Division of Market Regulation, Commission, on January 4, 2006.

<sup>6</sup> Advanced Micro Devices Inc. (AMD); Apache Corp. (APA); AT&T Corp. (T); Avaya, Inc. (AV); Baker Hughes, Inc. (BHI); BJ Services Co. (BJS); Bristol-Myers Squibb Co. (BMY); Burlington Resources, Inc. (BR); Calpine Corp. (CPN); Charles Schwab Corp. (SCH); Citigroup Inc. (C); ConocoPhillips (COP); Corning Inc. (GLW); Devon Energy Corp. (DVN); EMC Corp. (EMC); Exxon Mobil Corp. (XOM); Ford Motor Co. (F); Gateway, Inc. (GTW); General Electric Co. (GE); Halliburton Co. (HAL); Hewlett-Packard Co. (HPQ); Johnson & Johnson (JNJ); JPMorgan Chase & Co. (JPM); Kohl's Corp. (KSS); LSI Logic Corp. (LSI); Micron Technology, Inc. (MU); Motorola, Inc. (MOT); Noble Corp. (NE); Occidental Petroleum Corp. (OXY); Office Depot Inc. (ODP); Pfizer Inc. (PFE); Phelps Dodge Corp. (PD); Pulte Homes, Inc. (PHM); Qwest Communications International Inc. (Q); Schlumberger Ltd. (SLB); Solectron Corp. (SLR); Sovereign Bancorp, Inc. (SOV); Time Warner, Inc. (TWX); Valero Energy Corp. (VLO); and Verizon Communications, Inc. (VZ).

As stated in the prior filings, Nasdaq notes that it planned to run the pilot for a period of at least three months; however, Nasdaq states that, because the authority for this proposal provided by the Nasdaq Board of Directors ran only through December 31, 2005, Nasdaq needed to obtain Board approval for a longer pilot. Having obtained such approval, Nasdaq filed to extend the pilot for NASD members through February 28, 2005.<sup>7</sup> In this filing, Nasdaq is proposing to apply the same extension to non-NASD members that use Nasdaq's Brut Facility.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general, and with section 15A(b)(5) of the Act,<sup>9</sup> in particular, in that the proposed rule change, as amended, 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 Nasdaq's Brut Facility a fee change that is being implemented for NASD members that use the Nasdaq Market Center and/or Nasdaq's Brut Facility. 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. Nasdaq states that the proposed change, as amended, will continue a pilot to make a liquidity provider credit available to all market participants that opt to provide liquidity through Nasdaq or Brut to support executions in any of forty stocks included in the pilot program.

##### 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.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received.

<sup>7</sup> See SR-NASD-2005-154.

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

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

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

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

<sup>3</sup> Partial Amendment No. 1 clarified that the proposed rule change is a pilot program.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-155 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 20549-9303.

All submissions should refer to File Number SR-NASD-2005-155. 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 available publicly. All submissions should refer to File Number SR-NASD-2005-155 and should be submitted on or before February 7, 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>10</sup> Specifically, the Commission believes that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,<sup>11</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's Brut Facility to extend a pilot running through February 28, 2005. This proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective January 1, 2006, pursuant to SR-NASD-2005-154 and that Nasdaq stated it would implement on a pilot basis from January 1, 2006 to February 28, 2006.

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-2005-154, which implemented those fees for NASD members and which became effective as of January 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>12</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>13</sup> that the proposed rule change, as amended, (File No. SR-NASD-2005-155), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**  
*Secretary.*

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**BILLING CODE 8010-01-P**

<sup>10</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53081; File No. SR-NASD-2005-154]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify Pricing for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut Facility

January 9, 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 December 28, 2005, 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 December 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii)<sup>4</sup> of the Act and Rule 19b-4(f)(2) 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut Facility ("Brut"). Nasdaq states that it will implement the proposed rule change on January 1, 2006 for a pilot period running through February 28, 2006.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 7010. System Services

(a)-(h) No change.

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

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

<sup>3</sup> Partial Amendment No. 1 ("Amendment No. 1") clarified that the proposed rule change is a pilot program.

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

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