

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54933; File No. SR-NASDAQ-2006-051)

December 13, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Temporarily Adjust Tier Volume Limits

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 1, 2006, The NASDAQ Stock Market LLC (“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 substantially prepared by Nasdaq. On December 7, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 reduce, for the month of December 2006, the average daily volume tiers in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is available on Nasdaq’s Web site at <http://www.nasdaq.com>, at the principal office of Nasdaq, and at the Commission’s Public Reference Room.

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<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)(2).

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, for the month of December 2006, the average daily volume tiers for trading and routing in Nasdaq-listed securities contained in Nasdaq Rule 7018(a) to qualify for certain fee and rebate levels. Currently, in order to qualify for a per-share execution fee of \$0.0028, members must have an average daily volume through Nasdaq facilities in all securities during a particular month of (i) more than 30 million shares of liquidity provided and (ii) more than 50 million shares of liquidity accessed and/or routed. For routed orders, to qualify for a fee of the greater of (i) \$0.0028 per share executed or (ii) a pass-through of all applicable access fees charged by electronic communications networks that charge more than \$0.003 per share executed, a firm must have an average daily volume through Nasdaq facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity access and/or routed. For the month of December 2006, Nasdaq is proposing to reduce those qualification volume tiers to 27 million shares and 47 million shares, respectively. In addition, Nasdaq is also reducing for the month of

December 2006 the monthly average daily volume tier required to obtain the \$0.0025 credit rebate from its current 30 million share level to 27 million shares.<sup>5</sup>

Nasdaq states that the reduction is designed to respond to certain processing issues associated with Nasdaq's implementation of its new single-book execution facility that can result in inhibiting the ability of users to submit orders to the system and thus not reach their usual levels of participation that would historically entitle them to the most competitive fee and rebate levels. Nasdaq believes that a temporary reduction of the qualification tiers is appropriate while both Nasdaq and its users gain more familiarity with the new single-book trading environment.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Sections 6(b)(4) of the Act,<sup>7</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### 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.

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<sup>5</sup> In addition, Nasdaq is also making certain non-substantive and corrective changes to Nasdaq Rule 7018(a) of reflect, among other things, the recent termination of the operation of Nasdaq's Brut Facility.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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 proposed rule change is subject 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> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization.

Accordingly, the proposal is effective upon Commission receipt of the filing. 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>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 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

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 7, 2006, the date on which the Exchange submitted Amendment No. 1.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-051 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-NASDAQ-2006-051. 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 office of Nasdaq. 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-NASDAQ-2006-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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