

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54119; File No. SR-Nasdaq-2006-014]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Description of the ACES Communications Service

July 10, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 7, 2006, The NASDAQ Stock Market LLC (“Exchange” or “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 the Exchange.³ Nasdaq has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ 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 Exchange proposes to amend Nasdaq Rule 6210 to allow non-members to use the ACES communications service. The text of the proposed rule change is set forth below. Additions are in *italics* and deletions are in [brackets].

* * * * *

6210. Definitions

(a) and (b) No change

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Subsequent to filing the proposal, the Exchange clarified that Item 8 of the Form 19b-4 should state that the proposed rule change is not based on rules of another self-regulatory organization or of the Commission. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, on July 10, 2006.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

(c) The term “Receiving Subscriber” means any [Nasdaq member that is registered as a Nasdaq market maker or ITS/CAES Market Maker and] *person* that has executed an agreement with Nasdaq authorizing its use of ACES to receive ACES Orders from Routing Subscribers.

(d) The term “Routing Subscriber” means any [Nasdaq member] *person* that has executed an agreement with Nasdaq authorizing its use of ACES to route orders to Receiving Subscribers’ order management systems.

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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, the Exchange 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 Exchange 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

ACES is a neutral communications service that allows market participants to route orders to one another. ACES does not effect trade executions, and it does not report executed trades to “the tape.” Moreover, market participants receiving orders through ACES may execute them in any manner that they deem consistent with duties of best execution and other applicable industry obligations. As the ACES service can be of value to all market participants, both members and non-members of the NASD have historically been permitted to use it. Thus, today, there are a number of non-members who actually send their orders using the ACES system.

The rule set under which Nasdaq will shortly begin to operate as an exchange has for the first time included a description of ACES.⁶ However, as this description is currently worded, it would require that all ACES users be Nasdaq members, which would be a departure from the existing practice. Nasdaq proposes to adjust the applicable language in order to

eliminate this restriction entirely before Nasdaq begins operating as an exchange and to avoid denying access to ACES to non-members that wish to use it for either routing or receiving orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁷ in general and furthers the objectives of section 6(b)(5) of the Act⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder because it (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹¹

The Exchange has requested that the Commission waive the 30-day operative delay of Rule 19b-4(f)(6)(iii) so that the proposed rule change may become

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.

⁶ See Nasdaq Rules 6200-6250.

effective on the date that Nasdaq commences operations as a national securities exchange (currently scheduled to be August 1, 2006). The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest because doing so will permit non-members to continue to use ACES without interruption. Therefore, the Commission has determined to waive the 30-day operative delay and allow the proposed rule change to become operative on the date that Nasdaq commences operations as a national securities exchange.¹²

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.

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. Please include File No. SR-Nasdaq-2006-014 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-2006-014. 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 Commissions 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 Exchange. 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-2006-014 and should be submitted on or before August 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54118; File No. SR-NASD-2005-114]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to the Regulation of Compensation, Fees, and Expenses in Public Offerings of Real Estate Investments Trusts and Direct Participation Programs

July 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On June 12, 2006, NASD filed amendment No. 1 to the proposed rule change.³ 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

NASD is proposing to amend NASD Rule 2810, to address the regulation of compensation, fees, and expenses in public offerings of real estate investments trusts and direct participation programs. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2810. Direct Participation Programs

- (a) No Change.
- (b) Requirements
- (1) Application

No member or person associated with a member shall participate in a public offering of a direct participation program or a limited partnership rollup transaction *or, where expressly provided below, a real estate investment trust as defined in Rule 2340(c)(4) ("REIT")*, except in accordance with this paragraph (b), *provided however, this paragraph (b) shall not apply to an initial or secondary public offering of or a secondary market transaction in a unit, depositary receipt or other interest in a direct participation program that complies with subparagraph (2)(D).*

- (2) No Change.
- (3) Disclosure
- (A) Through (C) No Change.
- (D) Prior to executing a purchase

transaction in a direct participation program *or a REIT*, a member or person associated with a member shall inform the prospective participant of all pertinent facts relating to the liquidity and marketability of the program *or REIT* during the term of the investment[;]. *Included in the pertinent facts shall be information regarding whether the sponsor has offered prior programs or REITs in which disclosed in the offering materials was a date or time period at which the program or REIT might be liquidated, and whether the prior program(s) or REIT(s) in fact liquidated on or around that date or during the time period.* [provided, however, that paragraph (b) shall not apply to an initial or secondary public offering of a secondary market transaction in a unit, depositary receipt or other interest in a direct participation program which complies with subparagraph (2)(D).]

(4) Organization and Offering Expenses

(A) No member or person associated with a member shall underwrite or participate in a public offering of a

¹² For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced the original filing, NASD clarified its discussion of certain of the proposed amendments, and made other technical changes.