

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is proposing to increase its liquidity provider credit for NASD members using the Nasdaq Facilities to trade securities listed on the New York Stock Exchange, the American Stock Exchange, and other exchanges. Specifically, the change applies to securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds ("Covered Securities").<sup>7</sup> Nasdaq currently offers a liquidity provider credit of \$0.0005 per share to firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of more than 5 million shares of liquidity accessed, provided, or routed. Effective July 3, 2006, Nasdaq will offer an increased credit of \$0.0006 per share for firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of 10 million or more shares of liquidity provided. Nasdaq believes the change should encourage firms to make greater use of the Nasdaq Facilities for trading Covered Securities, particularly with regard to using the Nasdaq Facilities to provide liquidity to support executions.

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 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. Nasdaq states that the proposed rule change, as amended, would increase the liquidity provider credit available to firms that make substantial use of the Nasdaq Facilities for trading Covered Securities, thereby reducing overall trading costs.

*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.

<sup>7</sup> Exchange-Traded Funds listed on venues other than Nasdaq are subject to the same fee schedule as Nasdaq-listed securities, under NASD Rule 7010(i)(1).

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

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

*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 is subject to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>11</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>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 No. SR-NASD-2006-078 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NASD-2006-078. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</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 July 26, 2006, the date on which the Exchange submitted Amendment No. 2.

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 will also 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 No. SR-NASD-2006-078 and should be submitted on or before August 31, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54269; File No. SR-NASD-2006-079]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding Pricing for Non-Members Using Nasdaq's Brut and Inet Facilities**

August 3, 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 June 30, 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 and II below, which Items have been prepared by Nasdaq. On July 25, 2006, Nasdaq filed Amendment No. 1 to

<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.

the proposed rule change. On July 26, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission 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 and Inet Facilities. The filing will apply to these non-members the same pricing change that Nasdaq is instituting for members.<sup>3</sup> Nasdaq seeks approval to implement the proposed rule change retroactively as of July 3, 2006. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].<sup>4</sup>

#### 7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing

(1)–(7) No change.

(8) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR–NASDAQ–2005–019, SR–NASDAQ–2005–035, SR–NASDAQ–2005–048, SR–NASDAQ–2005–071, SR–NASDAQ–2005–125, SR–NASDAQ–2005–137, SR–NASDAQ–2005–154, SR–NASDAQ–2006–013, SR–NASDAQ–2006–023, SR–NASDAQ–2006–031, [and] SR–NASDAQ–2006–057, and SR–NASDAQ–2006–078 and as applied to non-members by SR–NASDAQ–2005–020, SR–NASDAQ–2005–038, SR–NASDAQ–2005–049, SR–NASDAQ–2005–072, SR–NASDAQ–2005–126, SR–NASDAQ–2005–138, SR–NASDAQ–2005–155, SR–NASDAQ–2006–014, SR–NASDAQ–2006–024, SR–NASDAQ–2006–032, [and] SR–NASDAQ–2006–058, and SR–NASDAQ–2006–079.

(j)–(y) No change.

\* \* \* \* \*

<sup>3</sup> See Securities Exchange Act Release No. 54268 (August 3, 2006) (File No. SR–NASDAQ–2006–078).

<sup>4</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasd.com](http://www.nasd.com), as amended by SR–NASDAQ–2006–057 (May 1, 2006) on an immediately effective basis and as further proposed to be amended by SR–NASDAQ–2006–058 (May 1, 2006). If SR–NASDAQ–2006–058 is not approved by the Commission, Nasdaq will file a conforming amendment to SR–NASDAQ–2006–079.

The NASDAQ Stock Market LLC ("NASDAQ LLC") will not file conforming changes to its rules with regard to order execution and routing by non-members, since persons that are not members of NASDAQ LLC will not be permitted to use its order execution and routing systems.

### 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 had 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–NASDAQ–2006–078<sup>5</sup> Nasdaq increased its liquidity provider credit for NASD members using the Nasdaq Market Center and Nasdaq's Brut and Inet Facilities (the "Nasdaq Facilities") to trade securities listed on the New York Stock Exchange, the American Stock Exchange, and other exchanges. Specifically, the change applies to securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds ("Covered Securities").<sup>6</sup> Nasdaq currently offers a liquidity provider credit of \$0.0005 per share to firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of more than 5 million shares of liquidity accessed, provided, or routed. Pursuant to SR–NASDAQ–2006–078, effective July 3, 2006, Nasdaq will offer an increased credit of \$0.0006 per share for firms with an average daily volume through the Nasdaq Facilities in Covered Securities during a month of 10 million or more shares of liquidity provided. Nasdaq believes the change should encourage firms to make greater use of the Nasdaq Facilities for trading Covered Securities, particularly with regard to using the Nasdaq Facilities to provide liquidity to support executions.

Nasdaq is submitting this filing to apply these changes to non-members using Nasdaq's Brut and Inet Facilities, because Nasdaq anticipates that these non-members will be allowed to continue to use these facilities until

<sup>5</sup> See Securities Exchange Act Release No. 54268 (August 3, 2006) (File No. SR–NASDAQ–2006–078).

<sup>6</sup> Exchange-Traded Funds listed on venues other than Nasdaq are subject to the same fee schedule as Nasdaq-listed securities, under NASD Rule 7010(i)(1).

NASDAQ LLC begins to operate as a national securities exchange.

##### 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 15A(b)(5) of the Act,<sup>8</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, as amended, applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use Brut, Inet, and the Nasdaq Market Center. 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.

#### 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

Written comments were neither solicited nor received.

### 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–NASDAQ–2006–079 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–2006–079. This file

<sup>7</sup> 15 U.S.C. 78o–3.

<sup>8</sup> 15 U.S.C. 78o–3(b)(5).

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 publicly available. All submissions should refer to File Number SR-NASD-2006-079 and should be submitted on or before August 31, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, 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 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 June 30, 2006, pursuant to SR-NASD-2006-078.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2006-078, which implemented those fees for NASD members and which became effective as of June 30, 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. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2006-079) and Amendments Nos. 1 and 2 thereto be, and hereby are, approved on an accelerated basis.

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

J. Lynn Taylor,

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54276; File No. SR-NYSE-2006-55]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 36 Communication Between Exchange and Members' Offices

August 4, 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 27, 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)<sup>4</sup> thereunder, which renders the proposal 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 is proposing to extend the portable phone pilot ("Pilot") for an additional six months, until January 31, 2007. The Pilot amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker and Registered Competitive Market Maker ("RCMM") to use an Exchange authorized and provided portable telephone on the Exchange Floor provided certain conditions are met. The current Pilot expires on July 31, 2006.<sup>5</sup>

#### 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. 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

The Commission originally approved the Pilot to be implemented as a six-month pilot<sup>6</sup> beginning no later than June 23, 2003.<sup>7</sup> Since the inception of the Pilot, the Exchange has extended the Pilot six times with the current Pilot

<sup>1</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>2</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> See Securities Exchange Act Release No. 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR-NYSE-2006-03).

<sup>4</sup> See Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR-NYSE-2002-11) ("Original Order").

<sup>5</sup> See Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR-NYSE-2003-19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

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

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

<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>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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