

the Commission's Public Reference Room. Copies of such 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-2006-010 and should be submitted on or before June 15, 2006.

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which has been adopted by each of the ITS participant exchanges other than NASD,<sup>16</sup> the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain

funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,<sup>17</sup> the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already adopted the same fee arrangement.<sup>18</sup>

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2006-010) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Nancy M. Morris,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53838; File No. SR-NASD-2006-059]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Related to Non-NASD Member Broker/Dealer Access to Nasdaq's Brut and INET Facilities

May 18, 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 and II below, which Items have been prepared by Nasdaq. On May 16, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq filed the proposed rule change, as amended, as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<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 continue the participation of broker-dealers that are non-NASD members in Nasdaq's Brut and INET systems through the earlier of July 1, 2006, or the date Nasdaq becomes operational as a national securities exchange for the particular types of securities traded by those non-members in Nasdaq's INET and Brut systems. Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

#### 4901. Definitions

(a) through (h) No change.  
(i) The term "Participant" shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. [Until May 1, 2006] [t]The term "Participant" shall also include non-NASD broker/dealers that desire to use the System and otherwise meet all other requirements for System participation. *Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.*

(j) through (w) No Change

\* \* \* \* \*

#### 4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's

<sup>14</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>16</sup> See letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> See *supra* note 16.

<sup>19</sup> 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>3</sup> In Amendment No. 1, the Exchange clarified in the purpose section the number of non-member broker-dealers with access to the Brut and INET systems. In addition, Nasdaq requested waivers of the 5-day notice and 30-day pre-operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.

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

initial and continuing compliance with the following requirements:

(1)–(5) No Change.

(6) In addition to the above, [on or before May 1, 2006,] all System Participants shall be members of the Association. *Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.*

\* \* \* \* \*

## 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, 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 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, Proposed Rule Change

#### 1. Purpose

Nasdaq states that, under current rules, broker-dealers that are not members of the NASD may use the Brut and INET systems until May 1, 2006. Nasdaq is proposing to modify this provision so as to allow non-NASD member broker-dealers to use the Brut and INET systems until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-member. Nasdaq believes that this division of dates upon which non-NASD members must be members of the Nasdaq exchange in order to continue to use Nasdaq's trading facilities is necessary because Nasdaq plans to become operational as an exchange in two phases with the first involving only Nasdaq securities, with a second later phase for securities listed by other exchanges. Under the proposal, non-NASD members trading Nasdaq-listed securities would be required to be a Nasdaq exchange member to continue to trade Nasdaq securities in Brut and INET on the date that Nasdaq becomes operational as exchange for Nasdaq issues, while entities trading other

exchange-listed securities would be allowed continued access to the Brut and INET systems for that trading until such time as Nasdaq becomes operational as an exchange for non-Nasdaq issues. Nasdaq states that in neither scenario would non-NASD member access to the Brut and INET systems extend beyond July 1, 2006 without a further Commission-approved extension.

Nasdaq states that this extension is intended to allow these non-NASD member broker-dealers to have continued access to Brut and INET while they take actions to become members of the recently-approved Nasdaq exchange. Nasdaq notes that only 44 non-NASD member broker-dealers currently have access to its Brut and INET systems (4 in the Brut system and 40 in the INET system) and, as before, Nasdaq commits not to allow any additional non-NASD broker-dealers access during this extension period.<sup>5</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, 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 is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system.

### 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 with respect to the proposed rule change, as amended.

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

Because the proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time

as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and the five-day pre-filing notice requirement and designate the proposed rule change, as amended, to become effective upon filing. Nasdaq believes that waivers of such periods will allow continued uninterrupted access to the Brut and INET systems for non-NASD broker-dealers in the period of time immediately preceding Nasdaq's operation as an exchange. The Commission believes that waiving the 30-day pre-operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest because it would facilitate the orderly transition of Nasdaq to a national securities exchange, thus removing impediments to a free and open market and a national market system. For the reasons stated above, the Commission designates the proposal, as amended, to become effective and operative on May 1, 2006.<sup>12</sup>

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 the furtherance of the purposes of the Act.<sup>13</sup>

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> The effective date of the original proposed rule change is May 1, 2006, and the effective date of Amendment No. 1 is May 16, 2006. 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 May 16, 2006, the date on which the Exchange submitted Amendment No. 1.

<sup>5</sup> See Amendment No. 1, *supra* note 3.

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

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

#### 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-2006-059 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-2006-059. 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 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-NASD-2006-059 and should be submitted on or before June 15, 2006.

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

Nancy M. Morris,  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53826; File No. SR-NYSE-2005-90]

##### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 To Allow Certain Institutional Customers To Elect Not To Receive Account Statements**

May 18, 2006.

Pursuant to section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 21, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed change to NYSE Rule 409 (Statements of Accounts to Customers) as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 28, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> 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 amend NYSE Rule 409 to allow institutional customers conducting a Delivery versus Payment and Receive versus Payment ("DVP/RVP") business to elect not to receive account statements.

The text of the proposed rule change is set forth below. *Italics* indicate new text that would be added to the current text of NYSE Rule 409.

##### **Rule 409.**

Statements of Accounts to Customers

(a) Except with the permission of the Exchange, *or as otherwise provided by this paragraph*, member organizations

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

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

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, a partial amendment, the NYSE proposed additional changes to the text of proposed amended Rule 409, which are incorporated in the proposed rule text below.

shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. *Quarterly statements need not be sent to a customer pursuant to Rule 409(a) if:*

(1) *The customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);*

(2) *All transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387;*

(3) *The account does not show security or money positions at the end of the quarter;*

(4) *The customer consents to the suspension of such statements in writing. Such consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Securities Exchange Act of 1934;*

(5) *The member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and*

(6) *The member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.*

*Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.*

*For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.*

(b) through (g)—No change.

Supplementary Material—No change.

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

In filing the proposed rule change and Amendment No. 1 with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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.