

if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to thirty days after the date of filing. Nasdaq requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow continued and uninterrupted access to Nasdaq's Brut and INET trading facilities for non-NASD member broker/dealers and their customers while such broker/dealers take steps to become members of the Nasdaq Exchange before it becomes operational as a national securities exchange. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow non-NASD member broker/dealers to continue to participate in Nasdaq's Brut and INET systems without interruption. The Commission notes that by May 1, 2006, all Brut and INET participants must either be NASD members or Nasdaq Exchange members, contingent on whether the Nasdaq Exchange has begun operating as a national securities exchange. In addition, the Commission notes that members of NASD, as well as broker/dealers that are currently not NASD members, will be able to apply to become a Nasdaq Exchange member during the period of transition before the Nasdaq Exchange becomes operational.<sup>14</sup> For these reasons, the Commission designates the proposed rule change as effective and operative immediately.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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>16</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 Number SR-NASD-2006-021 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 Number SR-NASD-2006-021. 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

<sup>16</sup> The effective date of the original proposed rule change is February 7, 2006, and the effective date of Amendment No. 1 is February 8, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers such period to commence on February 8, 2006, the date on which Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-021 and should be submitted on or before March 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53317; File No. SR-NASD-2005-156]

### 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 Fees for the use of Nasdaq's Application Programming Interface Protocol by NASD Members

February 15, 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 30, 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 January 27, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge of a self-regulatory organization, pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit

<sup>17</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>3</sup> Amendment No. 1 modified the proposal to reflect the transition of the final non-member user of the API protocol in the first week of January 2006. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on January 27, 2006, the date Nasdaq filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

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

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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Pursuant to Rule 19b-4(f)(6)(iii), Nasdaq has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which Nasdaq filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See Nasdaq Exchange Approval Order, 71 FR at 3554 (referring to recently approved Nasdaq Exchange Rule 1013(a)(6)).

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

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 amend NASD Rule 7010 to modify fees for use of Nasdaq's Application Programming Interface ("API") protocol by NASD members. Nasdaq will implement the

proposed rule change on January 1, 2006.

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

\* \* \* \* \*

**7000. CHARGES FOR SERVICES AND EQUIPMENT**

**7010. System Services**

(a)–(e) No change.

(f) Access Services. The following charges are assessed by Nasdaq for connectivity to the Nasdaq Market Center (NMC) and, where indicated, to Nasdaq's Brut Facility (Brut).

(1) Legacy Nasdaq Workstation™ Service

(A) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge .....	\$[2,035] <del>8,000</del> /month per service delivery platform ("SDP") connected via T1 circuits. \$[1,000/month per SDP connected via Digital Subscriber Line ("DSL"), plus \$1,000 per DSL early termination fee if service is terminated within 60 days of installation].
Display Charge .....	\$525/month per logon for the first 150 logons. \$200/month for each additional logon.
Additional Circuit/SDP Charge .....	\$[3,235] <del>8,000</del> /month.
PD and SDP Maintenance:	
Monthly maintenance agreement .....	\$55/presentation device ("PD") logon or SDP/month.
Hourly fee for maintenance provided without monthly maintenance agreement.	\$195 per hour (two hour minimum), plus cost of parts.
ECN Direct Connection .....	\$1,200 per port pair per month.

(B)–(C) No change.

[(D) DSL service (i) shall be provided solely to NASD members without API logons, (ii) shall be provided to only one SDP per location, and (iii) may not be used in connection with SDP T1 circuit connections at the same location. A subscriber with an SDP connected to Nasdaq via T1 circuits that orders DSL on or before June 1, 2004 shall not be required to pay charges under Rule 7040 for initial disconnection of T1 circuits and installation of DSL. In addition, if such a subscriber cancels DSL service within 10 business days of its first date of DSL service, the subscriber shall not be required to pay the early termination fee or charges under Rule 7040 for disconnection of DSL and reinstallation of T1 circuits.]

(2)–(4) No change.

(g)–(w) No change.

\* \* \* \* \*

**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**

As described in SR–NASD–2005–002,<sup>6</sup> Nasdaq is in the process of sunseting its API protocol. Although the API protocol supports a high volume of message traffic, it requires the use of a Service Delivery Platform ("SDP"), a hardware unit located at the subscriber's premises, resulting in comparatively higher communications and infrastructure costs for firms using API. As a result, Nasdaq has developed the Nasdaq Information Exchange or "QIX," a new proprietary protocol that does not require use of an SDP. Nasdaq believes that QIX offers the benefits of the API protocol but at a significantly reduced cost to its users. QIX has been available for use in production since January 2005.

For the last ten months, Nasdaq has been working with users of the API protocol to transition them to QIX and/or one of Nasdaq's other telecommunication protocols, the Financial Information Exchange ("FIX"), the Computer-to-Computer Interface ("CTCI"), or internet-based Nasdaq Workstations. Nevertheless, several users of the API are not yet ready to make their transition, and therefore Nasdaq is extending the sunset date into the first quarter of 2006. As the number of API users decreases,

however, Nasdaq must spread the significant fixed costs associated with operation of the protocol over a smaller customer base. As a result, an increase in the fees associated with use of the protocol is necessary to allow Nasdaq to recoup a greater portion of its costs. Specifically, effective January 1, 2006, Nasdaq will increase the service charge assessed for each SDP from \$2,035 per month to \$8,000 per month. Nasdaq will also increase the additional circuit/SDP charge from \$3,235 per month to \$8,000 per month. As described in NASD Rule 7010(f)(1)(C), this charge is assessed when subscribers make inefficient use of their SDPs and/or the T1 circuits used to connect SDPs to Nasdaq. Nasdaq is, however, eliminating the \$1,000 per month charge for SDPs connected to Nasdaq via DSL lines, because all users of such SDPs have transitioned to other access protocols.<sup>7</sup>

**2. Statutory Basis**

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general, and sections 15A(b)(5)<sup>9</sup> of the Act, 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 will allow Nasdaq to recoup

<sup>7</sup> This proposed rule change applies solely to NASD members. The final non-member user of the API protocol transitioned away from the protocol in the first week of January 2006.

<sup>8</sup> 15 U.S.C. 78o–3.

<sup>9</sup> 15 U.S.C. 78o–3(b)(5).

<sup>6</sup> Securities Exchange Act Release No. 51170 (February 9, 2005), 70 FR 7988 (February 16, 2005).

more of the costs associated with continued operation of the API protocol for the benefit of a decreasing number of subscribers.

#### *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, as amended.

#### *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 proposed rule change has become effective pursuant 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 imposed by NASD. 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, 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-2005-156 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 NASD-2005-156. 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 offices of 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 NASD-2005-156 and should be submitted on or before March 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53316; File No. SR-NASD-2006-017]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Sale Processing in Nasdaq's INET Facility**

February 15, 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 February 2, 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 substantially prepared by Nasdaq. Nasdaq filed the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which rendered 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 the Substance of the Proposed Rule Change**

Nasdaq proposes to clarify the method by which its INET facility processes orders to comply with short selling restrictions. Nasdaq would like to implement the proposed rule change immediately. The text of the proposed rule change is available on the NASD's Web site, <http://www.nasd.com>, at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

#### **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

According to the Exchange, Nasdaq's INET System currently provides users the option of having the INET System price adjust and/or cancel short sale orders so as to comply with rules governing short selling. Under the proposal, Nasdaq is proposing to more fully explain the INET System's short sale compliance method and to apply it to all short sale orders entered into its System that are subject to short selling restrictions. As such, all orders to sell short that are subject to a short selling restriction would be processed as follows:

For Nasdaq-listed securities, if an order to sell short is entered on a down bid that, if executed upon entry, would violate NASD Rule 3350, the INET System will automatically re-price 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> 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>3</sup> 17 CFR 240.19b-4(f)(6).