

number of customer queries. Broker-dealer clients pay lower fees at the four levels than subscribers directly to the Exchange, and broker-dealers receive a rebate of the subscription fees collected. Specifically, the Fee Schedule provides that participating broker-dealers receive: (1) A rebate of 35% of the subscription fee collected from subscribers; and (2) an additional bonus rebate based on (a) the achievement of certain subscription levels; and (b) the size of their firm, as measured by the number of the firm's customers.

With the instant proposed rule change, the Exchange seeks to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers.<sup>6</sup> Under the proposal, the lower level subscription fees billed to broker-dealer clients will now be expanded to apply to subscribers of non-broker-dealers. These non-broker-dealers will also be allowed to receive the same rebates and bonus rebates as described above and previously approved for broker-dealers participating in the Broker Marketing Alliance.<sup>7</sup>

In support of its proposal, the Exchange states that, since the introduction of this market data offering, it has received interest from many non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, seeking to sell subscriptions and participate in a revenue sharing arrangement similar to the Broker Marketing Alliance. The Exchange believes that allowing non-broker dealers to market its enhanced sentiment market data offering will increase the number of product subscribers.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. We note that the fee structure for subscribers of non-broker-dealers is identical to the fee structure previously

approved for subscribers of participating U.S. broker-dealers in the Broker Marketing Alliance and, as noted above, the rebates and revenue sharing arrangements are the same. Further, as noted in the Prior Order, enhanced sentiment market data is a purely optional product, and it is not necessary to subscribe to this service to trade options on the ISE.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change be and hereby is approved.

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

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-18975 Filed 11-8-06; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54702; File No. SR-NASD-2006-121]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 11890(b)(2) To Allow NASD To Designate Officers To Take Action Under the Rule With Respect to Clearly Erroneous Transactions

November 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 October 30, 2006, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 from interested persons.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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> 15 U.S.C. 78s(b)(3)(A).

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

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 11890 (Clearly Erroneous Transactions) to allow any NASD officer designated by an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries. The text of the proposed rule change is available on 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, NASD 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. NASD 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

Currently, NASD Rule 11890(b)(2) provides that, in the event of (1) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any such quotation,

<sup>6</sup> In the ISE's Schedule of Fees, it will now be referred to as a "Subscription through Marketing Alliance."

<sup>7</sup> See Prior Order, *supra* at n.4.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

communication, or trade reporting system.<sup>5</sup>

On October 1, 2005, NASD assumed direct authority for OTC equities operations, in place of a prior delegation to Nasdaq.<sup>6</sup> At that time, NASD amended NASD Rule 11890(b)(2) to provide NASD (rather than Nasdaq) with the authority to declare, on its own motion, clearly erroneous transactions in OTC equity securities (*e.g.*, OTCBB and Pink Sheets securities) in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. Additionally, NASD amended NASD Rule 11890(b)(2) to provide NASD with similar clearly erroneous authority with respect to all transactions in Nasdaq-listed securities reported to NASD.<sup>7</sup> Thus, NASD Rule 11890(b)(2) also provides NASD with the authority to declare, on its own motion, clearly erroneous transactions in Nasdaq-listed securities reported to NASD's Alternative Display Facility or an NASD Trade Reporting Facility<sup>8</sup> in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions.

By its terms, NASD Rule 11890(b)(2) authorizes an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to take action with respect to clearly erroneous transactions. Currently, NASD has one Executive Vice President of Market Regulation, and one Executive Vice

President of Transparency Services. NASD is proposing to amend NASD Rule 11890(b)(2) to provide that an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may also designate any NASD officer (*i.e.*, an NASD employee with the title of Vice President or above) to take action under this Rule. NASD believes that such designation is consistent with current NASD Rules 11890(a)(1) and (b)(1), which authorize officers of Nasdaq designated by its President, or any Executive Vice President of Nasdaq designated by its President, respectively, to act under the Rule.

NASD applies this authority in only very limited circumstances, for example, where there is an extraordinary event and multiple self-regulatory organizations are canceling or modifying trades. However, since implementation of the aforementioned rule changes, it has become apparent to NASD that having just two NASD officers authorized to act under the Rule is insufficient to review and consider promptly potential clearly erroneous transactions as they arise. For example, if the Executive Vice President of Market Regulation and Executive Vice President of Transparency Services are unreachable at the same time because they are in meetings or on travel or out of the office for any other reason, potential clearly erroneous transactions cannot be reviewed in a timely manner. NASD staff believes that delays in reviewing these transactions should be avoided and the proposed rule change will allow NASD to take prompt and effective action with respect to clearly erroneous trades.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will lessen the impact of clearly erroneous transactions on the market and the public by allowing NASD to empower designated NASD officers with the authority to take prompt action with respect to such transactions.

## B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

## 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 by NASD.

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

Because the foregoing proposed rule change 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup> In accordance with Rule 19b-4(f)(6)(iii),<sup>11</sup> NASD provided the Commission with 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 of filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay based upon a representation that the requested waiver is necessary to enable NASD to take prompt and effective action with respect to clearly erroneous transactions as they arise. NASD noted that there have been instances where the review of potential clearly erroneous transactions has been delayed because both Executive Vice Presidents authorized under the Rule have been unreachable. NASD wishes to remedy this situation as quickly as possible. In light of the foregoing, the Commission believes that such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective

<sup>5</sup> NASD has filed a proposed rule change that would (1) renumber NASD Rule 11890(b)(2) as Rule 11890(a) and rename it as "Procedures for Reviewing Transactions on NASD's Own Motion;" and (2) expand the scope of the rule to transactions in all securities by deleting the reference to Nasdaq-listed and OTC equity securities. *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006) (notice of filing of SR-NASD-2006-104).

<sup>6</sup> *See* Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (order approving SR-NASD-2005-089).

<sup>7</sup> *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087). Prior to these amendments, such authority was delegated to Nasdaq with respect to trades reported through Nasdaq's Automated Confirmation Transaction (ACT) Service and there was no such authority with respect to trades reported to NASD's Alternative Display Facility.

<sup>8</sup> *See* Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087 relating to the NASD/Nasdaq Trade Reporting Facility); 54479 (September 21, 2006), 71 FR 56573 (September 27, 2006) (notice of filing of SR-NASD-2006-108 relating to the proposed NASD/National Stock Exchange Trade Reporting Facility); and 54591 (October 12, 2006), 71 FR 61519 (October 18, 2006) (notice of filing of SR-NASD-2006-115 relating to the proposed NASD/Boston Stock Exchange Trade Reporting Facility).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6), respectively.

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

and operative upon filing with the Commission.<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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-121 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-2006-121. 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 such filing also will be available for inspection and copying at the principal office 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 SR-NASD-2006-121 and should be submitted on or before November 30, 2006.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6-18957 Filed 11-8-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54695; File No. SR-NASD-2006-116]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using ITS/CAES, Brut and Inet

November 2, 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 September 29, 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, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq submitted the proposed rule change under 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 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using ITS/CAES, Brut, and Inet. Nasdaq implemented the proposed rule change on October 2, 2006. The text of the proposed rule change is available on the

Nasdaq's Web site at <http://www.nasdaq.com>, at Nasdaq'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

In response to a recently announced pricing change by NYSE Arca, Inc. ("NYSE Arca")<sup>5</sup> and to better reflect other pre-existing NYSE Arca charges, Nasdaq is instituting a price change for orders in non-Nasdaq exchange-listed securities routed to NYSE Arca for execution. Specifically, most orders in non-Nasdaq securities routed to NYSE Arca will be assessed a routing fee of \$0.0028 per share executed; the exception will be for orders for exchange-traded funds routed outside of the Intermarket Trading System ("ITS"),<sup>6</sup> for which the fee will remain \$0.003 per share executed. By contrast, the applicable fee had been \$0.001 per share executed for orders in securities other than exchange-traded funds and \$0.0007 per share executed for orders routed through the ITS. The price change reflects the higher costs that Nasdaq expects to incur to access liquidity at NYSE Arca.

To enhance the competitiveness of Nasdaq's DOT router to the NYSE, Nasdaq is also instituting a cap of \$100,000 per month with respect to orders routed through DOT that do not attempt to execute against liquidity in Nasdaq trading systems prior to routing and that are not charged a fee by the

<sup>5</sup> See Securities Exchange Act Release No. 54686 (November 1, 2006) (SR-NYSEArca-2006-68).

<sup>6</sup> Since October 1, 2006, the effective date of the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("Linkage Plan"), connectivity between markets is provided pursuant to the Linkage Plan. The current ITS technology is used to effectuate both the ITS Plan and Linkage Plan. Therefore, the term "ITS" applies to the technology used to effectuate both the ITS Plan and the Linkage Plan.

<sup>12</sup> For purposes only of waiving the 30-day operative delay 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).

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

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