

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 Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> 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, or such shorter time as the Commission may designate.

The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay of Rule 19b-4(f)(6)(iii) so that the proposed rule change may become effective immediately.<sup>13</sup> The Commission believes that waiving the pre-filing requirement and the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission has determined to waive the pre-filing requirement and the operative delay and allow the proposed rule change to become operative immediately.<sup>14</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 No. SR-Amex-2006-13 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-Amex-2006-13. 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 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-Amex-2006-13 and should be submitted on or before March 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53318; File No. SR-Amex-2006-12]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Technology Assessment Fee for the Use of Legacy Options Trading Systems**

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 6, 2006, the American Stock Exchange LLC ("Exchange" or "Amex") 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 the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 adopt a Technology Assessment Fee to be assessed on its members for the continued use of legacy options trading systems. The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at Amex's principal office, and at the Commission's Public Reference Room.

<sup>15</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)(ii).

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

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

<sup>12</sup> 17 CFR 19b-4(f)(6).

<sup>13</sup> The Exchange gave the Commission written notice of its intent to file the proposed rule change by notice on January 14, 2005.

<sup>14</sup> 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).

## 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

On May 20, 2004, the Commission approved the Amex's proposal to implement a new options trading platform known as the Amex New Trading Environment (the "ANTE System" or "ANTE").<sup>5</sup> ANTE is intended to replace the following legacy options trading systems: the Amex Options Display Book (AODB), Amex's theoretical price calculator (XTOPS), and Auto-Ex. On May 25, 2004, the Amex began rolling out the ANTE System on its trading floor on a specialist's post-by-specialist's post basis. At that time it was anticipated the roll-out would be completed by the end of the second quarter of 2005. The implementation date for the full roll-out of the ANTE System was subsequently extended to June 30, 2006.<sup>6</sup> Amex has rolled out the ANTE System to all its option classes except one—the Nasdaq 100 Index options ("NDX"). NDX has the largest notional value of any option class, with average premiums of \$40. The specialist for this product is concerned that the theoretical price calculator provided by the ANTE System may not accurately price the options on this index. The specialist has installed its own theoretical index price calculator, which currently calculates prices for the firm's other options products, including the Mini Nasdaq

Index (MNX), an index valued at one-tenth the value of NDX.

The specialist firm continues to resist moving NDX off the legacy options trading systems and onto the ANTE System as it seeks to gain experience using its proprietary price calculator. The NDX specialist is concerned about the magnitude of errors that could occur using a theoretical price calculator with NDX, given its large notional value and the size of the underlying index.

Although the Exchange is mindful of the specialist's concerns, maintaining two platforms for the trading of options—the legacy options trading systems and ANTE—is costly for the Exchange. Therefore, the Exchange is proposing to assess the specialist firm a fee to cover the Exchange's costs for maintaining its legacy options trading systems at the Securities Industry Automation Corporation ("SIAC"). The Exchange currently pays a monthly maintenance fee to SIAC of \$12,000. The proposal will require the specialist firm to reimburse the Exchange for these maintenance costs until it transitions all of its options classes to the ANTE System.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(4)<sup>9</sup> in particular in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to assess the one member organization continuing to use its legacy options trading systems in order to recover its costs for maintaining these systems.

### 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.

<sup>7</sup> The Exchange expects that the NDX specialist will move NDX onto the ANTE System by June 30, 2006, the new deadline for implementation of the ANTE System. See *supra* note 6.

<sup>8</sup> 15 U.S.C. 78f(b).

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

## 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 Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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 No. SR-Amex-2006-12 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-Amex-2006-12. 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

<sup>5</sup> See Securities Exchange Act Release No. 49747, 69 FR 30344 (May 27, 2004) (File No. SR-Amex-2003-89).

<sup>6</sup> In a separate filing submitted February 6, 2006, for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii), the Exchange proposed to extend the deadline for implementation of ANTE System for all option classes from December 31, 2005, to June 30, 2006. See File No. SR-Amex-2006-13, notice of which the Commission is separately publishing for comment today (Securities Exchange Act Release No. 53319).

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

<sup>11</sup> 17 CFR 19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2006-12 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. 34-53321; File No. SR-NASD-2006-024]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify Pricing for Non-Members Using Nasdaq's Brut and Inet Facilities

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 13, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

#### 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 to trade securities priced under \$1.00. 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 February 13, 2006. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, 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 had received on the proposed rule change. 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

Since the beginning of February, Nasdaq has observed an increase in the extent to which market participants are posting limit orders in certain securities priced under \$1.00 in circumstances where the price of the posted order locks or crosses prices available on other markets or improves upon the NBBO by an extremely small amount. The alteration in market participant behavior appears to be a result of both Nasdaq's introduction of subpenny pricing in Nasdaq-listed securities priced under \$1.00, as well as the dissemination of said pricing via the Securities Information Processor, and a recent Nasdaq pricing change that eliminated caps on liquidity provider rebates for these securities. As a result, it appears that certain participants are submitting orders in these low-priced securities in a manner calculated to earn liquidity provider rebates. Because Nasdaq considers this behavior detrimental to market quality, Nasdaq proposes to modify its pricing for securities priced under \$1.00 to eliminate the liquidity provider credit. To offset the effect of this change on market participants engaged in legitimate trading of these securities, Nasdaq also proposes to reduce the fee to access liquidity in these stocks from the current fee of \$0.0028 or \$0.003 per

share to a charge equal to 0.1% of the total transaction cost. Thus, in a transaction to buy 1,000 shares at \$0.50, the charge to access liquidity would be \$0.50. Nasdaq believes this change will also ensure that Nasdaq's pricing for low-priced securities is consistent with Rule 610(c)(2) of Regulation NMS when it takes effect later this year. Rule 610(c)(2) will limit fees for access to quotations under \$1.00 to no more than 0.3% of the quotation price per share.

In SR-NASD-2006-023, Nasdaq made this change applicable to NASD members on an immediately effective basis. Nasdaq is submitting this filing to apply the changes to non-members using the Brut and Inet facilities, and also plans to submit a filing to make both the member and non-member changes retroactive to February 1, 2006.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>4</sup> in general, and with section 15A(b)(5) of the Act,<sup>5</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 applies to non-members that use Brut and Inet a fee change that is being implemented for NASD members that use the Nasdaq Facilities. Accordingly, Nasdaq believes that the proposed rule change 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 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 is consistent with the Act. Comments may be submitted by any of the following methods:

<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> See Securities Exchange Act Release No. 53321 (February 15, 2006) (File No. SR-NASD-2006-023).

<sup>4</sup> 15 U.S.C. 78o-3.

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