

Act,<sup>9</sup> in particular, in that the 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 Nasdaq operates or controls. The proposed rule change is designed to allow members to purchase a subset of the functionality available through the NNW at a lower cost.

#### *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 foregoing 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 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, 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-2006-062 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-2006-062. 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 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-2006-062 and should be submitted on or before February 16, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-1226 Filed 1-25-07; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55129; File No. SR-NASD-2006-137]

### **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 System and Inet Facility**

January 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 December 29, 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, II, and III below, which Items have been prepared substantially by NASD. NASD 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.<sup>5</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**

NASD proposes to amend NASD Rule 7010 to modify the pricing for its members using the ITS/CAES System and the Inet facility (the "Nasdaq Facilities"), which are currently operated by The Nasdaq Stock Market, Inc. and its subsidiaries ("Nasdaq") as facilities of NASD. The text of the proposed rule change is available on the NASD's Web site at <http://www.nasd.com>, at NASD 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

<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).

<sup>5</sup> NASD stipulated the implementation date to be January 2, 2007.

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

<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).

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*

**Purpose**

This proposed rule change adopts a simplified pricing schedule for the systems for trading non-Nasdaq exchange-listed securities that are currently operated as NASD facilities by Nasdaq. The fees apply to the Nasdaq Facilities, but as is currently the case with respect to fees for these systems, the fee schedule reflects the volume of a member's use of ITS/CAES, Inet, and the Nasdaq Market Center (a facility of The NASDAQ Stock Market LLC (the "Nasdaq Exchange")) in determining applicable fees.<sup>6</sup> The order execution fees in the Nasdaq Facilities, fees for routing to venues other than the New York Stock Exchange (the "NYSE"), and fees for routing orders in exchange-traded funds to the NYSE will be as follows:

- \$0.0027 per share executed for market participants that (i) add more than 30 million shares of liquidity per day during the month and route or remove more than 50 million shares of liquidity per day during the month, or (ii) add more than 20 million shares of liquidity per day during the month and route or remove more than 60 million shares of liquidity per day during the month;
- \$0.0028 per share executed for market participants that add more than 20 million shares of liquidity per day during the month and route or remove more than 35 million shares of liquidity during the month;
- \$0.003 per share executed for other market participants.

The order execution fee for routed orders that do not attempt to execute in the Nasdaq Facilities prior to routing will be \$0.003 per share executed and the credits to members providing liquidity through the Nasdaq Facilities will be as follows:

<sup>6</sup> The consideration of volumes through the Nasdaq Exchange is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fee schedules will be amended to remove all references to Nasdaq at or shortly after the time when the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities. The Nasdaq Exchange has submitted a comparable filing to establish the same fees for Nasdaq-listed securities, which likewise considers trading volumes through ITS/CAES and Inet. See SR-NASDAQ-2006-068.

- \$0.0025 per share executed for market participants adding more than 30 million shares of liquidity per day during the month;

- \$0.002 for other market participants.

As is currently the case, for orders in securities other than exchange-traded funds routed to the NYSE, the fee will be \$0.000225 per share executed if the order attempts to execute in the Nasdaq Facilities prior to routing and \$0.000275 per share executed if the order does not attempt to execute prior to routing. The new fee schedule will also retain the current surcharge of \$0.01 per share executed for orders charged a fee by an American Stock Exchange specialist.

**2. Statutory Basis**

NASD believes that the proposed rule change is consistent with Section 15A of the Act,<sup>7</sup> in general, and furthers the objectives of 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.

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

NASD 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*

NASD has neither solicited nor received comments on the proposed rule change.

**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>9</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>10</sup> because it establishes or changes a due, fee, or other charge imposed by the 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 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-2006-137 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-2006-137. 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 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 SR-NASD-2006-137 and should be submitted on or before February 16, 2007.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-1229 Filed 1-25-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55132; File No. SR-NYSE-2006-57]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Rule 180 to Require Member Organizations to Use the Automated Liability Notification System of a Registered Clearing Agency

January 19, 2007.

#### I. Introduction

On August 3, 2006, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on November 15, 2006, amended proposed rule change SR-NYSE-2006-57 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 7, 2006.<sup>2</sup> One comment letter was received.<sup>3</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

Prior to the rule change, NYSE's Rule 180 provided that if securities were not delivered within the required time frame, the party who failed to deliver was liable for any resulting damages. Rule 180 also required that claims for damages had to be made promptly. It is industry practice when one party is owed and has not received securities that are the subject of a voluntary corporate action for the owed party to send to the failing counterparty a notice of the liability that will be attendant with the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

It is also customary in the industry for the failing counterparty that receives a

liability notification either to reject the notice, to deliver the securities that are the subject of the liability notification, or to convert or exchange the securities to the corresponding corporate actions proceeds and deliver the proceeds. Liability notifications are usually sent by fax directly to the responsible failing counterparty or to its designees.

Failing counterparties are subjected to potential liability by their failure to respond to liability notifications. Failure to respond typically occurs because of processing errors, such as overlooking the faxed liability notification or not receiving it all, and because of the overall lack of uniformity in the process. There is currently no uniform method of notifying and confirming the transmission and receipt of liability notifications.

In response to a need for a reliable and uniform method of transmitting liability notifications, The Depository Trust Company ("DTC") developed the SMART/Track for Corporate Action Liability Notification Service (SMART/Track), a web-based system for the communication of liability notifications that is currently available to all DTC participants. SMART/Track allows DTC participants to easily create, send, process, and track corporate action liability notifications. Email notifications are automatically generated when liability notifications or replies to liability notifications are sent.

In response to an industry request that NYSE adopt a rule that would mandate the use of a system that would make uniform the method by which liability notifications are sent and received, NYSE is amending Rule 180. As amended, Rule 180 clarifies that if securities that were to be delivered pursuant to the rules of a registered clearing agency are not so delivered, the contract may be closed as provided by the rules of that clearing agency. If the contracts are not so closed or if there is a failure to deliver securities which are to be delivered pursuant to NYSE Rule 176 or 177 and in the absence of any notice or agreement, the contract shall continue without interest until the following business day. However, in every such case of non-delivery, the party not delivering the securities shall be liable for any damages which accrue thereby.

Rule 180 is also being amended to require that when the parties to a failed contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing

agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency's automated liability notification system.<sup>4</sup>

#### III. Comment Letters

The Commission received one comment letter, which supported the rule as proposed.<sup>5</sup> The commenter stated, "The Corporate Actions Division of the Securities Industry and Financial Markets Association is 100% in favor of this rule change."

#### IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>6</sup> Requiring the use of an automated liability notification system of a registered clearing agency should help reduce risk, costs, and delays resulting from processing errors and missing or inaccurate information that often occurs with manually processed liability notifications. Such an automated system should also provide broker-dealers with more timely receipt and distribution of such notices, immediate identification of the security affected by the notice, and a centralized system to manage and control all liability notifications. These benefits should, in turn, facilitate more efficient and cost-effective clearance and settlement of securities transactions.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with NYSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

<sup>4</sup> Currently DTC is the only registered clearing agency operating an automated liability notification service. At present, approximately 155 DTC participants are voluntarily using SMART/Track.

<sup>5</sup> *Supra* note 3.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 54818 (November 27, 2006), 71 FR 71010 (December 7, 2006) [File No. SR-NYSE-2006-57].

<sup>3</sup> Letter from John J. Wagner, Past President, 2003-2005, Corporate Actions Division, Inc., SIFMA, to Nancy M. Morris, Secretary, Commission (January 11, 2007).