

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an exchange.<sup>8</sup> Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would permit the schedule for non-Nasdaq members to mirror the schedule applicable to Nasdaq members that became effective on August 1, 2006, pursuant to SR-NASDAQ-2006-025.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-Nasdaq members are identical to those in SR-NASDAQ-2006-025, which implemented those fees for Nasdaq members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in Nasdaq's fee schedule by applying simultaneously the same pricing schedule for Nasdaq members and non-Nasdaq members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2006-026), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**

*Secretary.*

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<sup>8</sup> In approving the 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).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54498; File No. SR-NASD-2006-095]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Regarding Fees for Non-NASD Member Subscribers to the New Nasdaq Workstation and Weblink ACT

September 25, 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 August 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. Nasdaq amended the proposed rule change on September 20, 2006.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and simultaneously granting accelerated approval of the proposed rule change, as amended.

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

Nasdaq proposes to modify fees for non-NASD member subscribers to the New Nasdaq Workstation ("NNW") and Weblink ACT. The proposed rule change will apply to these non-members the same changes that Nasdaq is instituting for members.<sup>4</sup> Nasdaq seeks to implement the proposed rule change retroactively as of August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at <http://www.nasd.com>.<sup>5</sup>

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

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

<sup>3</sup> See Amendment No. 1.

<sup>4</sup> See SR-NASD-2006-094.

<sup>5</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasd.com>, as modified on an immediately effective basis by SR-NASD-2006-094. Nasdaq is filing this proposed rule change because the NNW and Weblink ACT may be used in limited circumstances by service bureaus that are not NASD members with respect to the quotation, execution, and trade reporting systems operated by Nasdaq with respect to non-Nasdaq securities. The NASDAQ Stock Market LLC ("Nasdaq Exchange") is also filing a comparable modification to Nasdaq Exchange Rule 7015.

#### 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. 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

In SR-NASD-2006-094, Nasdaq amended Rule 7010 to change NASD member fees associated with its Web-based New Nasdaq Workstation ("NNW") and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II ("NWII") last year, the fee for the NNW had been \$435 per user per month, plus \$90 per month for data feeds included with the NNW, for a total cost of \$525 per user per month. In SR-NASD-2006-094, Nasdaq reduced the fee to \$475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility ("TRF") operated by Nasdaq and the NASD,<sup>6</sup> as well as access to ACT functionality still offered by Nasdaq under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, in SR-NASD-2006-094, Nasdaq increased the

<sup>6</sup> Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current \$150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to \$200, while the \$300 fee for higher volume users is being increased to \$375. Nasdaq is filing this proposed rule change to apply the foregoing changes to non-NASD members subscribing to these products.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with 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. The proposed rule change applies to non-members a fee change that is being implemented for NASD members. Accordingly, the proposed rule change promotes an equitable allocation of fees between members and non-members using these services.

### 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. 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-2006-095 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-2006-095. 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 SR-NASD-2006-095 and should be submitted on or before October 23, 2006.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>10</sup> which requires that the rules of a self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

<sup>9</sup> In approving the 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>10</sup> 15 U.S.C. 78o-3(b)(5).

The Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective on August 1, 2006, pursuant to SR-NASD-2006-094.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-NASD members are identical to those in SR-NASD-2006-094, which implemented those fees for NASD members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in NASD's fee schedule by applying simultaneously the same pricing schedule for NASD members and non-NASD members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR-NASD-2006-095), be, and hereby is, approved on an accelerated basis.

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54499; File No. SR-NASD-2006-094]

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September 25, 2006.

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

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