
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **September 7, 2004 (September 7, 2004)**

THE NASDAQ STOCK MARKET, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-32651
(Commission File Number)

52-1165937
(I.R.S. Employer
Identification No.)

One Liberty Plaza, New York, New York 10006
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: **(212) 401-8700**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 2.01. Completion of Acquisition or Disposition of Assets

On September 7, 2004, The Nasdaq Stock Market, Inc. ("Nasdaq") completed its acquisition of Brut, LLC ("Brut"), the owner and operator of the Brut electronic communication network, and affiliated entities from SunGard Data Systems, Inc., pursuant to the terms of a purchase agreement dated as of May 25, 2004 and amended as of September 7, 2004 (the "Purchase Agreement"). Nasdaq acquired Brut by purchasing all of the membership interests in Brut's parent, a Delaware limited liability company. Pursuant to the terms of the Purchase Agreement, Nasdaq paid total cash consideration of \$190 million, which is subject to certain post-closing adjustments. The source of the funds for the acquisition was from available cash and investments. Nasdaq is not aware of any pre-existing material relationship between Nasdaq and its affiliates and SunGard and its affiliates. A press release, dated September 7, 2004, discussing the acquisition is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of business acquired.

Financial statements required by this Item will be filed by amendment not later than 71 calendar days after the date this initial report on Form 8-K must be filed.

(b) Pro forma financial information

Pro forma financial information required by this Item will be filed by amendment not later than 71 calendar days after the date this initial report on Form 8-K must be filed.

(c) Exhibits.

- 2.1 Purchase Agreement, dated May 25, 2004, by and among Automated Securities Clearance, Ltd., Toll Associates LLC, The Nasdaq Stock Market, Inc. and SunGard Data Systems, Inc. (incorporated by reference to exhibit 99.2 to Current Report on Form 8-K, filed May 26, 2004).
- 2.2 Amendment No. 1 to Purchase Agreement, dated as of September 7, 2004 by and among Automated Securities Clearance, Ltd., Toll Associates LLC, The Nasdaq Stock Market, Inc., and SunGard Data Systems, Inc.
- 99.1 Press Release, dated September 7, 2004.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: September 7, 2004

THE NASDAQ STOCK MARKET, INC.

By: /s/ Edward S. Knight
Edward S. Knight
Executive Vice President and General Counsel

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**AMENDMENT NO. 1 TO THE
PURCHASE AGREEMENT**

Amendment No. 1 (this "**Amendment**"), dated as of September 7, 2004, is made by and among Automated Securities Clearance, Ltd., a New Jersey corporation, Toll Associates LLC, a Delaware limited liability company, The Nasdaq Stock Market, Inc., a Delaware corporation, and SunGard Data Systems, Inc., a Delaware corporation.

WHEREAS, the parties hereto have entered into the Purchase Agreement, dated May 25, 2004 (the "**Purchase Agreement**"); and

WHEREAS, in accordance with Section 12.4 of the Purchase Agreement, the parties hereto desire to make certain amendments to the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Capitalized Terms.** Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Purchase Agreement.

2. **Amendments.** The Purchase Agreement is hereby amended as set forth in this Section 2:

a. Section 1 of the Purchase Agreement is hereby amended by adding the following as Sections 1.130, 1.131, 1.132, 1.133 and 1.134:

1.130. "Brut's Certified Cash Assets" shall have the meaning given that term in Section 7.2.5.

1.131. "Estimated Seller's Assets" shall have the meaning given that term in Section 7.2.5.

1.132. "Excess Seller's Asset Value" shall have the meaning given that term in Section 2.4.

1.133. "Outstanding Checks Amount" shall have the meaning given that term in Section 7.2.5.

1.134. "Sale Bonus Amount" means the dollar amount of the sum of each of the sale bonus amounts set forth on Schedule A attached hereto."

b. Section 1.105 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"1.105. "Seller's Assets" means, without duplication, Brut's Cash Assets plus its prepaids and cash deposits plus BEL's Cash Assets."

c. Section 2.2 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"2.2. Purchase Price. The total purchase price for the Membership Interests (the "**Purchase Price**") shall be (a) a cash payment in the amount of (i) One Hundred Ninety Million Dollars (\$190,000,000), plus (ii) the dollar amount of the Estimated Seller's Assets, minus (iii) the Sale Bonus Amount (collectively, the "**Closing Payment**"), which shall be payable to Seller at Closing, plus (b) a cash payment equal to the Excess Seller's Asset Value, if any, which shall be payable to Seller in accordance with Section 2.4, plus (c) a cash payment equal to the Working Capital Excess, if any, which shall be payable to Seller in accordance with Section 2.5, minus (d) a cash payment equal to the Working Capital Deficit, if any, which shall be payable to Buyer in accordance with Section 2.5."

d. The phrase "as of the Closing Date ("**Closing Balance Sheet**")" in Section 2.3 of the Purchase Agreement is hereby deleted and replaced with the phrase "as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date ("**Closing Balance Sheet**")".

e. Section 2.4 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"2.4. Seller's Asset Value. To the extent that the aggregate dollar amount of Seller's Assets reflected on the Closing Balance Sheet (the "**Seller's Asset Value**") exceeds the dollar amount of the Estimated Sellers' Assets (the "**Excess Seller's Asset Value**"), such Excess Seller's Asset Value shall represent on a dollar for dollar basis the Purchase Price component payable by Buyer pursuant to Section 2.2(b). The amount of the Excess Seller's Asset Value shall be paid by Buyer to Seller in cash within ten (10) business days after the Working Capital Statement is ultimately finalized in accordance with Section 2.5.1."

f. Section 2.5 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"2.5. Working Capital Adjustment. The Purchase Price component payable by Buyer pursuant to Section 2.2(c) shall be equal to the amount by which (a) Brut's consolidated working capital, assuming there is no Seller's Asset Value, as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date (i.e., current Assets less Seller's Assets and current liabilities, each as reflected on the Closing Balance Sheet) exceeds (b) Brut's consolidated working capital, assuming there is no Seller's Asset Value, as of December 31, 2003 (i.e., current Assets less Seller's Assets and current liabilities, each as reflected on the Latest Audited Balance Sheet) ("**Working Capital Excess**"). The Purchase Price component payable by Seller pursuant to Section 2.2(d) shall be equal to (a)(i) the amount by which Brut's consolidated working capital, assuming there is no Seller's Asset Value, as of December 31, 2003 (i.e., current Assets less Seller's Assets and current liabilities, each as reflected on the Latest Audited Balance Sheet) exceeds (ii) Brut's consolidated working capital, assuming there is no Seller's Asset Value, as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date (i.e., current Assets less Seller's Assets and current liabilities, each as reflected on the Closing Balance Sheet) plus (b) the amount by which the Estimated Seller's Assets exceeds the Seller's Asset Value (the sum of the foregoing clause (a) and clause (b), "**Working Capital Deficit**"). In no event shall any of the Sale Bonus Amount be included as a liability on the Closing Balance Sheet for purposes of calculating the working capital adjustments described in this Section 2.5."

g. The phrase “Buyer agrees that beginning on the date following the Closing Date” in Section 2.9(a) of the Purchase Agreement is hereby deleted and replaced with the phrase “Buyer agrees that

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beginning on the Closing Date” and the phrase “as of the Closing Date” in Section 2.9(a) of the Purchase Agreement is hereby deleted and replaced with the phrase “as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date”.

h. Section 5 of the Purchase Agreement is hereby amended by adding the following as Section 5.12:

“**5.12. Sale Bonus.** Buyer shall cause Brut within thirty (30) days after the Closing to pay each employee listed on Schedule A attached hereto the amount set forth next to such employee’s name on Schedule A attached hereto (net of applicable withholding Taxes) in accordance with the terms of the Sale Bonus Agreement between Parent and such employee.”

i. Section 7.1 shall be amended by inserting the following sentence at the end of such section: “The Closing shall take effect at 12:01 a.m., New York City time, on the Closing Date.”

j. Section 7.2.5 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“**Section 7.2.5. Cash Asset Certification.** A certificate, in form and substance satisfactory to Buyer, dated the Closing Date and duly executed by the President and Chief Financial Officer of each Toll Entity, certifying as to the amount of total Cash Assets of each Toll Entity as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date, together with supporting bank statements as to account balances and similar documentation; provided, that for purposes of this Section 7.2.5, the certificate of Brut shall certify as to the amount, as of 11:59 p.m., New York City time, on the day immediately preceding the Closing Date, of (a) total Cash Assets of Brut and BEL in their respective bank accounts (“**Bank Held Cash**”), (b) Brut’s total cash deposits with NSCC and Merrill Pro (“**NSCC/Merrill Deposits**” and together with Bank Held Cash, “**Brut’s Certified Cash Assets**”), in the case of each of clause (a) and clause (b), together with supporting bank statements as to account balances and/or similar documentation, (c) the good faith estimate of the aggregate dollar amount of Brut’s outstanding checks and electronic payments (“**Outstanding Checks Amount**”), together with supporting documentation and reasonable detail, and (d) Brut’s Certified Cash Assets less the Outstanding Checks Amount (“**Estimated Seller’s Assets**”).”

k. Each occurrence of the phrase “the Closing Date” in Section 9.1 of the Purchase Agreement is hereby deleted and replaced with the phrase “the day immediately preceding the Closing Date”.

l. The final occurrence of the phrase “the Closing Date” in Section 9.2 of the Purchase Agreement is hereby deleted and replaced with the phrase “the day immediately preceding the Closing Date”.

m. The phrase “after the Closing Date” in Section 9.3 of the Purchase Agreement is hereby deleted and replaced with the phrase “on or after the Closing Date”.

n. The first occurrence of the phrase “the Closing Date” in Section 9.4 of the Purchase Agreement is hereby deleted and replaced with the phrase “the day immediately preceding the Closing Date” and the final occurrence of the phrase “after the Closing Date” is hereby deleted and replaced with the phrase “on or after the Closing Date”.

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o. Section 9.5 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“**9.5. Tax Indemnity.**

(a) Seller shall indemnify and hold harmless Buyer Indemnities from and against:

(i) any Taxes of each of the Toll Entities arising with respect to any period ending on or before the day immediately preceding the Closing Date and the portion of any other period ending on the day immediately preceding the Closing Date;

(ii) any Taxes or Losses incurred or suffered by Buyer as a result of or arising out of any breach or any representation or warranty of Seller contained in Section 3.15;

(iii) any Taxes imposed on Brut Inc as a member of the “affiliated group” (within the meaning of Section 1504(a) of the Code) of which Seller (or any predecessor or successor thereof) is the common parent that arises under Treasury Regulation Section 1.1502-6(a) and any similar provisions under state or local Law including Brut Inc as a member in a “unitary business” as that term has been defined in U.S. Supreme Court jurisprudence;

(iv) the breach by Seller or the failure by Seller to perform (or cause to have performed) any of the covenants made by it or agreements entered into contained in this Section 9; and

(v) any Taxes or Losses incurred or suffered by the Buyer Indemnitees as a result of the application of Section 280G(a) or Section 4999(a) of the Code to any Sale Bonus Amount or any other payment made pursuant to any agreement with Seller or its Affiliates that may be deemed a “parachute payment” within the meaning of Section 280G(b)(2) of the Code (collectively, “**Seller Parachute Payments**”), provided, however, that the indemnity provisions of this Section 9.5(a)(v) shall only be applicable if Section 280G(a) or Section 4999(a) of the Code would apply solely to the Seller Parachute Payments, without aggregation of any “parachute payments” made pursuant to any agreement with Buyer (other than this Agreement).

(b) Notwithstanding any other provision of this Agreement to the contrary, the obligations of the parties set forth in this Section 9 shall: (i) remain in full force and effect until thirty (30) days following the expiration of the applicable statute of limitations (taking into account all extensions thereof); and (ii) not be subject to Section 10. In the event of a conflict between this Section 9 and any other provision of this Agreement, this Section 9 shall govern and control.”

3. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original hereof.

4. Modifications. No amendment or modification of this Amendment shall be effective unless in writing and signed by the party against whom enforcement is sought.

5. Controlling Law. THIS AMENDMENT IS MADE UNDER, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE

APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED SOLELY THEREIN, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

6. Miscellaneous. Except as specifically provided in this Amendment, this Amendment shall not be deemed to amend or alter any other terms, obligations or conditions set forth in the Purchase Agreement or any of the documents referred to therein. Wherever the Purchase Agreement is referred to in the Purchase Agreement or in any other agreements, documents, instruments, certificates, such reference shall be to the Purchase Agreement as amended hereby. Except as expressly amended hereby, the terms and conditions of the Purchase Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena T. Friedman
Name: Adena T. Friedman
Title: Executive Vice President

TOLL ASSOCIATES LLC

By: /s/ Richard C. Tarbox
Name: Richard C. Tarbox
Title: Vice President

AUTOMATED SECURITIES CLEARANCE, LTD.

By: /s/ Richard C. Tarbox
Name: Richard C. Tarbox
Title: Vice President

SUNGARD DATA SYSTEMS, INC.

By: /s/ Richard C. Tarbox
Name: Richard C. Tarbox
Title: Sr. Vice President-Corporate Development



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Press Release

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NASDAQ Completes Acquisition of BRUT LLC

NEW YORK, NY, September 7, 2004 – The Nasdaq Stock Market, Inc. (“NASDAQ[®]”; OTCBB: NDAQ) today announced that it has completed its acquisition of Brut LLC, the owner and operator of the Brut ECN, from SunGard Data Systems Inc. (NYSE: SDS) for a total consideration of \$190 million in cash. NASDAQ has received all the necessary regulatory approvals and expects the transaction to be accretive to its shareholders within 12 months.

The completion of the Brut acquisition accelerates NASDAQ’s growth initiatives and enhances NASDAQ’s competitive position. Effective September 1st, Brut began to report its trades to the NASDAQ Market Center. NASDAQ and Brut customers will benefit from a deeper pool of liquidity, enhanced execution quality and better depth-of-book information. NASDAQ customers will also be able to access multiple destinations outside the NASDAQ Market Center through the use of Brut’s sophisticated, smart-order router.

Bob Greifeld, president and chief executive officer of NASDAQ, stated, “This transaction is an important milestone for NASDAQ’s growth plans and NASDAQ and Brut customers are the beneficiaries, with deeper liquidity, better connectivity and the addition of new execution services. As a result, we believe this transaction will complement our strategy to provide lower cost and more efficient trading, contributing to our mission to be the number one stock market for trading U.S. stocks.”

Throughout 2004, NASDAQ has delivered its customers a trading platform with competitive pricing, FIX connectivity, new order types and complete anonymity. With the Brut transaction, NASDAQ will continue to be the only neutral destination for trading NASDAQ-listed stocks. As an unconflicted trading destination, NASDAQ offers deep pools of liquidity without competing with its customers for institutional order flow.

“The Brut ECN, like NASDAQ, has focused on innovation and attention to customer service. As a result of this transaction, we will maximize our services to become a one-stop venue with deeper liquidity, advanced order routing and connectivity on one competitive low-cost platform. We look forward to a smooth and efficient integration,” added Mr. Greifeld.

The integration of Brut’s services into NASDAQ will be seamless to both NASDAQ and Brut’s customers. Brut will continue to operate under the Brut name as a broker-dealer; however, it will operate as a part of The NASDAQ Stock Market. Brian Hyndman will continue to be President of Brut and will become Senior Vice President of NASDAQ Transaction Services, reporting directly to Chris Concannon, Executive Vice President of NASDAQ Transaction Services. William O’Brien will remain Chief Operating Officer of Brut reporting directly to David Warren, NASDAQ’s Chief Financial Officer.

In connection with the transaction, NASDAQ and SunGard entered into a hosting and multi-year processing agreement for SunGard to provide a real-time securities clearance and settlement system for certain NASDAQ trades.

NASDAQ is the largest U.S. electronic stock market. With approximately 3,300 companies, it lists more companies and, on average, trades more shares per day than any other U.S. market. It is home to companies that are leaders across all areas of business including technology, retail, communications, financial services, transportation, media and biotechnology. NASDAQ is the primary market for trading NASDAQ-listed stocks. For more information about NASDAQ, visit the NASDAQ Web site at <http://www.nasdaq.com> or the NASDAQ NewsroomSM at <http://www.nasdaq.com/newsroom/>

About Brut

Brut, LLC owns and operates the Brut ECN, an alternative trading system that offers a low-cost execution utility for the trading community without sacrificing technology, execution quality or customer service. Brut offers its customers participation in the NASDAQ market center for increased liquidity and enhanced order routing capabilities, and allows institutional clients to use the Brut Sponsorship Program to trade electronically while still maintaining their traditional brokerage relationships. (Member SIPC, NASD, CSE, BSE. 55 Broadway, 9th Floor, New York, NY 10006)

About SunGard

SunGard is a global leader in integrated software and processing solutions,

primarily for financial services. SunGard also helps information-dependent enterprises of all types to ensure the continuity of their business. SunGard serves more than 20,000 customers in more than 50 countries, including the world's 50 largest financial services companies. SunGard (NYSE:SDS) is a member of the S&P 500 and has annual revenue of \$3 billion Visit SunGard at www.sungard.com

Cautionary Note Regarding Forward-Looking Statements

The matters described herein may contain forward-looking statements that are made pursuant to the Safe Harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements involve a number of risks, uncertainties or other factors beyond the control of The NASDAQ Stock Market, Inc. (the "Company"), which could cause actual results to differ materially from historical results, performance or other expectations and from any opinions or statements expressed or implied with respect to future periods. These factors include, but are not limited to, the Company's ability to implement its strategic initiatives, economic, political and market conditions and fluctuations, government and industry regulation, interest rate risk, U.S. and global competition, and other factors detailed in the Company's annual report on Form 10-K, and periodic reports filed with the U.S. Securities and Exchange Commission. We undertake no obligation to release any revisions to any forward-looking statements.
