

NASDAQ STOCK MARKET INC
Form 8-K/A
January 27, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A
(AMENDMENT NO. 1)

CURRENT REPORT

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

Date of Report (Date of earliest event reported): January 27, 2006 (December 8, 2005)

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.)

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

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))
-

This Current Report on Form 8-K/A (Form 8-K/A) dated January 27, 2006, amends the Current Report on Form 8-K filed by The Nasdaq Stock Market, Inc. (Nasdaq) on December 14, 2005, which disclosed Nasdaq s acquisition of Instinet Group Incorporated (Instinet) and the immediate sale of Instinet s Institutional Brokerage division (Institutional Broker). As a result of these transactions, Nasdaq owns Instinet Group Incorporated, subsequently renamed Norway Acquisition Corp. (Norway). Norway owns 100.0% of INET Holding Company, Inc. (IHC), which owns 100.0% of INET ATS, Inc. (INET), an electronic communication network (ECN) and Island Execution Services, LLC. Balances acquired for Island Execution Services, LLC were nominal. The purpose of this Form 8-K/A is to provide financial disclosures required by Item 9.01 (Financial Statements and Exhibits) of Form 8-K with respect to the acquisition of Instinet Group Incorporated and the immediate sale of the Institutional Broker to an affiliate of Silver Lake Partners, II, L.P., (Silver Lake Partners or SLP), a private equity firm. In addition, the financial statements of Toll Associates LLC (Toll) as described below are presented. Toll is a holding company that owns a 99.8% interest in Brut LLC (Brut), the owner and operator of the Brut ECN. Toll owns a 100.0% interest in Brut Inc. (Brut Inc.), which owns the remaining 0.2% interest in Brut.

As discussed in Note 1, Description of Transactions and Basis of Presentation, the unaudited pro forma income statement information is presented as if the acquisition of Instinet and the sale of the Institutional Broker occurred on January 1, 2004.

Nasdaq purchased Toll from SunGard Data Systems Inc. (SunGard) on September 7, 2004. As such, the financial information for Toll for the period January 1, 2004 through September 6, 2004 (prior to closing of the acquisition) is also included in the unaudited pro forma condensed combined statement of income for the year ended December 31, 2004 in this Form 8-K/A. Since balance sheet data for Toll is included in Nasdaq s historical balance sheet at September 30, 2005, separate pro forma balance sheet data for Toll is not presented.

Section 9 Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

- (a) Financial Statements of Businesses Acquired.

Instinet Group Incorporated

Attached as Exhibit 99.1 hereto are the audited consolidated statements of financial condition of Instinet Group Incorporated as of December 31, 2004 and 2003, and the related consolidated statements of operations, changes in stockholders equity, and cash flows for each of the three years in the period ended December 31, 2004 and the related notes to consolidated financial statements.

Attached as Exhibit 99.2 hereto are the unaudited consolidated statements of financial condition of Instinet Group Incorporated as of September 30, 2005 and December 31, 2004, and the related unaudited consolidated statements of operations and cash flows for the three and nine months ended September 30, 2005 and 2004 and the related notes to the unaudited consolidated financial statements.

- (b) Pro Forma Financial Information.

Attached hereto is the:

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

Unaudited pro forma condensed combined balance sheet as of September 30, 2005 and the unaudited pro forma condensed combined statement of income for the nine months ended September 30, 2005.

Unaudited pro forma condensed combined statement of income for the year ended December 31, 2004.

Notes to the unaudited pro forma condensed combined financial statements.

(c) Exhibits

Exhibit 23.1 Consent of PricewaterhouseCoopers LLP

Exhibit 99.1 Consolidated Financial Statements and Report of Independent Registered Public Accounting Firm - Instinet Group Incorporated:

Consolidated Statements of Financial Condition as of December 31, 2004 and 2003

Consolidated Statements of Operations for the years ended December 31, 2004, 2003 and 2002

Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2004, 2003 and 2002

Consolidated Statements of Cash Flows for the years ended December 31, 2004, 2003 and 2002

Notes to Consolidated Financial Statements

Exhibit 99.2 Unaudited Consolidated Financial Statements - Instinet Group Incorporated:

Consolidated Statements of Financial Condition as of September 30, 2005 and December 31, 2004

Consolidated Statements of Operations and Cash Flows for the three and nine months ended September 30, 2005 and 2004

Notes to Consolidated Financial Statements

The SEC encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Form 8-K/A and attachments hereto contain these types of statements. We make these statements directly in this Form 8-K/A. Words such as "anticipates," "estimates," "expects," "projects," "intends," "plans," "believes" and words or terms of similar substance used in connection with any discussion of future operating results or financial performance identify forward-looking statements.

These forward-looking statements involve certain risks and uncertainties. Factors that could cause actual results to differ materially from those contemplated by the forward-looking statements include, among others, the following factors:

our operating results may be lower than expected;

our ability to implement our strategic initiatives and any consequences from our pursuit of our corporate strategy;

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

competition, economic, political and market conditions and fluctuations, including interest rate risk;

government and industry regulation; or

adverse changes may occur in the securities markets generally.

In connection with our acquisition of Instinet, and the immediate sale of the Institutional Broker, factors that may cause actual results to differ materially from those contemplated by such forward-looking statements include, but are not limited to, the following: (i) expected cost savings and other synergies from the acquisition cannot be fully realized or realized within the expected time frame; (ii) costs or difficulties related to the integration of the INET ECN and/or the separation and sale of the Institutional Broker are greater than expected; (iii) revenues following the acquisition are lower than expected; and (iv) regulation related to the integration; and (v) general economic conditions are less favorable than expected.

Most of these factors are difficult to predict accurately and are generally beyond our control. You should consider the uncertainty and risk resulting from such uncertainty in connection with any forward-looking statements that may be made herein. Readers are cautioned not to place undue reliance on these forward-looking statements and to carefully review the risk factors and other information detailed in Nasdaq's annual report on Form 10-K and periodic reports filed with the U.S. Securities and Exchange Commission. Except for our ongoing obligations to disclose material information under the federal securities laws, we

undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events. For any forward-looking statements contained in any document, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

Independent valuation specialists assisted Nasdaq management in determining the fair values of the net assets acquired and the intangible assets in both the Instinet and Toll acquisitions. The work performed by the independent valuation specialists has been considered by management in determining the fair values reflected in these unaudited pro forma condensed combined financial statements. The valuations are based on the actual assets acquired and liabilities assumed at the acquisition dates and management's consideration of the independent valuation specialists work.

The unaudited pro forma condensed combined financial information is presented for informational purposes only. The pro forma data is not necessarily indicative of what Nasdaq's financial position or results of operations actually would have been had Nasdaq completed the acquisition at the dates indicated. In addition, the unaudited pro forma condensed combined financial information does not purport to project the future financial position or operating results of the combined company.

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: January 27, 2006

THE NASDAQ STOCK MARKET, INC.

By /s/ David P. Warren

David P. Warren

Executive Vice President

and Chief Financial Officer

The Nasdaq Stock Market, Inc.

Unaudited Pro Forma Condensed Combined Statement of Income

Nine Months Ended September 30, 2005

(in thousands, except per share amounts)

	Nasdaq	Norway	Pro Forma Adjustments	Note 5	Pro Forma Combined
Revenues					
Market Services	\$ 453,390	\$ 368,336	\$ (43,936)	(a)	\$ 777,790
Issuer Services	166,748				166,748
Other	206				206
Total revenues	620,344	368,336	(43,936)		944,744
Cost of revenues					
Liquidity rebates	169,373	216,305			385,678
Brokerage, clearance and exchange fees	63,588	76,752	(62,569)	(a), (b), (c)	77,771
Total cost of revenues	232,961	293,057	(62,569)		463,449
Gross margin	387,383	75,279	18,633		481,295
Expenses					
Compensation and benefits	110,404	12,324			122,728
Marketing and advertising	4,842	406			5,248
Depreciation and amortization	46,765	5,323	5,498	(d), (g-3)	57,586
Professional and contract services	21,451	1,289			22,740
Computer operations and data communications	47,498	3,937			51,435
Provision for bad debts	(41)	(395)			(436)
Occupancy	21,337	2,003			23,340
General and administrative	23,373	7,772	(7,393)	(e-3)	23,752
Total direct expenses	275,629	32,659	(1,895)		306,393
Support costs from related parties, net	31,311				31,311
Investment income		(3,471)	3,471	(g-6)	
Total expenses	306,940	29,188	1,576		337,704
Operating income	80,443	46,091	17,057		143,591
Interest income	8,549	1,872			10,421
Interest expense	(12,236)		(28,327)	(e-1), (f-3, 4, 5)	(40,563)
Minority interest	44				44
Pre-tax operating income	76,800	47,963	(11,270)		113,493
Income tax provision	32,256	20,931	(8,666)	(g-7)	44,521
Net income	\$ 44,544	\$ 27,032	\$ (2,604)		\$ 68,972
Net income applicable to common stockholders:					
Net income	\$ 44,544	\$ 27,032	\$ (2,604)		\$ 68,972

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

Preferred stock:				
Dividends declared	(2,506)			(2,506)
Accretion of preferred stock	(3,047)			(3,047)
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Net income applicable to common stockholders	\$ 38,991	\$ 27,032	\$ (2,604)	\$ 63,419
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Basic and diluted earnings per share:				
Basic	\$ 0.49			0.79
	<u> </u>			<u> </u>
Diluted	\$ 0.42			0.65
	<u> </u>			<u> </u>
Weighted average common shares used to calculate earnings per share:				
Basic	79,890			79,890
Diluted	107,442			107,442

See Notes to the Unaudited Pro Forma Condensed Combined Financial Statements.

The Nasdaq Stock Market, Inc.

Unaudited Pro Forma Condensed Combined Statement of Income

Nine Months Ended September 30, 2005

Norway

(in thousands)

	<u>Instinet Reported</u>	<u>Less Institutional Broker</u>	<u>Pro Forma and Other Adjustments</u>	<u>Note 6</u>	<u>Norway</u>
Revenues					
Market Services	\$ 771,000	\$ 414,146	\$ 11,482	(a)	\$ 368,336
Interest income	22,522	20,650	(1,872)	(c)	
Interest expense	(3,005)	(3,005)			
Other		7,069	7,069	(b)	
Total revenues	790,517	438,860	16,679		368,336
Cost of revenues					
Soft dollar and commission recapture	110,129	110,129			
Liquidity rebates	204,823		11,482	(a)	216,305
Brokerage, clearance and exchange fees	165,295	88,543			76,752
Total cost of revenues	480,247	198,672	11,482		293,057
Gross margin	310,270	240,188	5,197		75,279
Expenses					
Compensation and benefits	167,313	154,989			12,324
Marketing and advertising	3,781	3,375			406
Depreciation and amortization	34,396	29,073			5,323
Professional and contract services	29,087	27,798			1,289
Computer operations and data communications	41,015	37,078			3,937
Provision for bad debts	(73)	322			(395)
Occupancy	42,728	41,719	994	(b)	2,003
General and administrative	12,549	10,852	6,075	(b)	7,772
Total direct expenses	330,796	305,206	7,069		32,659
Support costs from related parties, net					
Investment income	(36,373)	(32,902)			(3,471)
Total expenses	294,423	272,304	7,069		29,188
Operating income (loss) from continuing operations	15,847	(32,116)	(1,872)		46,091
Interest income			1,872	(c)	1,872
Pre-tax operating income (loss) from continuing operations	15,847	(32,116)			47,963
Income tax provision (benefit)	2,521	(18,410)			20,931
Net income (loss) from continuing operations	\$ 13,326	\$ (13,706)	\$		\$ 27,032



See Notes to the Unaudited Pro Forma Condensed Combined Financial Statements.

The Nasdaq Stock Market, Inc.

Unaudited Pro Forma Condensed Combined Balance Sheet

As of September 30, 2005

(in thousands, except share and par value amounts)

	Nasdaq	Norway Adjusted	Pro Forma and Other Adjustments	Note 5	Pro Forma Combined
Assets					
Current assets:					
Cash and cash equivalents	\$ 288,764	\$ 46,717	\$ (269,560)	(f-1, 2, 3)	\$ 65,921
Investments:					
Available-for-sale, at fair value	225,887	7,933	(7,933)	(i-2, 3)	225,887
Held-to-maturity, at amortized cost	30,595		(25,000)	(e-2)	5,595
Receivables, net	133,276	43,617	(1,576)	(f-1), (g-2)	175,317
Receivables from related parties	19				19
Deferred tax assets	11,266	3,567			14,833
Other current assets	56,430	13			56,443
Total current assets	746,237	101,847	(304,069)		544,015
Property and equipment:					
Land, buildings and improvements	60,827				60,827
Data processing equipment and software	184,475	1,199			185,674
Furniture, equipment and leasehold improvements	119,176	87			119,263
	364,478	1,286			365,764
Less accumulated depreciation and amortization	(238,097)	(91)			(238,188)
Total property and equipment, net	126,381	1,195			127,576
Non-current deferred tax assets	57,155	419	74,690	(h-1)	132,264
Goodwill	143,810	799,107			942,917
Intangible assets, net	37,996	172,870			210,866
Other assets	1,659	26	15,031	(f-3)	16,716
Total assets	\$ 1,113,238	\$ 1,075,464	\$ (214,348)		\$ 1,974,354
Liabilities					
Current liabilities:					
Accounts payable and accrued expenses	\$ 56,186	\$ 27,457	\$ (6,115)	(g-2)	\$ 77,528
Accrued personnel costs	37,584	6,102			43,686
Deferred revenue	84,622				84,622
Other accrued liabilities	49,252	8,582			57,834
Current portion of senior term notes			7,500	(f-1)	7,500
Payables to related parties	20,531				20,531
Total current liabilities	248,175	42,141	1,385		291,701
Senior notes	25,000		(25,000)	(e-2)	
Senior term notes			742,500	(f-1)	742,500
Convertible notes	442,333				442,333
Accrued pension costs	25,015				25,015
Non-current deferred tax liabilities	28,329	67,808			96,137

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

Non-current deferred revenue	94,289				94,289
Other liabilities	33,524	215	40,000	(h-1)	73,739
	<u> </u>	<u> </u>	<u> </u>		<u> </u>
Total liabilities	896,665	110,164	758,885		1,765,714
Minority interest	1,156				1,156
Mezzanine equity					
Warrants underlying common stock, 4,962,500 warrants outstanding	10,226		(10,226)	(i-4)	
Stockholders equity					
Common stock, \$0.01 par value, 300,000,000 shares authorized, shares issued: 130,684,483; shares outstanding: 81,890,531(81,714,281 pro forma shares outstanding)	1,307				1,307
Preferred stock, 30,000,000 shares authorized, Series C Cumulative Preferred Stock: 953,470 shares issued and outstanding; Series B Preferred Stock: 1 share issued and outstanding	94,687				94,687
Additional paid-in capital	363,480	965,300	(966,336)	(i-3, j)	362,444
Common stock in treasury, at cost: 48,793,952 shares (48,970,202 pro forma shares)	(625,021)		(6,897)	(i-2)	(631,918)
Warrants underlying common stock, 4,962,500 warrants outstanding			10,226	(i-4)	10,226
Accumulated other comprehensive loss	(815)				(815)
Deferred stock compensation	(2,752)				(2,752)
Common stock issuable	4,613				4,613
Retained earnings	369,692				369,692
	<u> </u>	<u> </u>	<u> </u>		<u> </u>
Total stockholders equity	205,191	965,300	(963,007)		207,484
	<u> </u>	<u> </u>	<u> </u>		<u> </u>
Total liabilities, minority interest, mezzanine and stockholders equity	\$ 1,113,238	\$ 1,075,464	\$ (214,348)		\$ 1,974,354
	<u> </u>	<u> </u>	<u> </u>		<u> </u>

See Notes to the Unaudited Pro Forma Condensed Combined Financial Statements.

The Nasdaq Stock Market, Inc.

Unaudited Pro Forma Condensed Combined Balance Sheet

As of September 30, 2005

Norway Adjusted

(in thousands)

	IHC	Pro Forma and Other Adjustments	Cash Purchased	Norway Adjustments	Note 5	Norway Adjusted
Assets						
Current assets:						
Cash and cash equivalents	\$ 120,923	\$ (105,006)	\$ 30,800		(f-1)	\$ 46,717
Investments	4,468	3,465			(g-1)	7,933
Receivables, net	60,377	(17,060)		300	(f-1), (g-1)	43,617
Deferred tax assets	2,087	1,480			(h-2)	3,567
Other current assets		13			(g-1)	13
Total current assets	187,855	(117,108)	30,800	300		101,847
Property and equipment:						
Data processing equipment and software		1,199			(g-1)	1,199
Furniture, equipment and leasehold improvements		87			(g-1)	87
		1,286				1,286
Less accumulated depreciation and amortization		(91)			(g-1)	(91)
Total property and equipment, net		1,195				1,195
Non-current deferred tax assets		419			(g-1), (h-2)	419
Goodwill		796,045		3,062	(f-1,2), (g-1, 4)	799,107
Intangible assets, net	22,178	150,692			(g-1, 5)	172,870
Other assets	102	(76)			(g-1)	26
Total assets	\$ 210,135	\$ 831,167	\$ 30,800	\$ 3,362		\$ 1,075,464
Liabilities						
Current liabilities:						
Accounts payable and accrued expenses	\$ 33,274	\$ (5,817)			(g-1)	\$ 27,457
Accrued personnel costs	4,145	1,957			(g-1)	6,102
Other accrued liabilities	29,437	(23,917)		3,062	(g-1)	8,582
Total current liabilities	66,856	(27,777)		3,062		42,141
Non-current deferred tax liabilities		67,808			(g-1), (h-2)	67,808
Other liabilities		215			(g-1)	215
Total liabilities	66,856	40,246		3,062		110,164
Stockholders equity						

Edgar Filing: NASDAQ STOCK MARKET INC - Form 8-K/A

Common stock	1	(1)		(i-1)	
Additional paid-in capital				(g-1),	
	519,848	445,152		(i-1)	965,300
Retained deficit	(376,570)	376,570		(i-1)	
	<u>143,279</u>	<u>821,721</u>			<u>965,300</u>
Total stockholders equity					
	<u>143,279</u>	<u>821,721</u>	<u>300</u>		<u>965,300</u>
Total liabilities and stockholders equity	\$ 210,135	\$ 861,967	\$ 3,362		\$ 1,075,464
	<u>\$ 210,135</u>	<u>\$ 861,967</u>	<u>\$ 3,362</u>		<u>\$ 1,075,464</u>

See Notes to the Unaudited Pro Forma Condensed Combined Financial Statements.

The Nasdaq Stock Market, Inc.

Unaudited Pro Forma Condensed Combined Balance Sheet

As of September 30, 2005

IHC

(in thousands)

	<u>Instinet Reported</u>	<u>Less Institutional Broker</u>	<u>Pro Forma and Other Adjustments</u>	<u>Note 6</u>	<u>IHC</u>
Assets					
Current assets:					
Cash and cash equivalents	\$ 949,717	\$ 828,794	\$		\$ 120,923
Securities owned, at market value	23,437	23,437			
Securities borrowed	205,889	205,889			
Investments	35,595	31,127			4,468
Receivables, net	331,542	271,165			60,377
Receivables from related parties		1,155	1,155	(d)	
Deferred tax assets	76,604	76,604	2,087	(e)	2,087
	<u>1,622,784</u>	<u>1,438,171</u>	<u>3,242</u>		<u>187,855</u>
Total current assets	1,622,784	1,438,171	3,242		187,855
Fixed assets and leasehold improvements, net	70,108	70,108			
Goodwill	38,971	38,971			
Intangible assets, net	22,178				22,178
Other assets	86,817	86,715			102
	<u>1,840,858</u>	<u>1,633,965</u>	<u>3,242</u>		<u>210,135</u>
Total assets	\$ 1,840,858	\$ 1,633,965	\$ 3,242		\$ 210,135
Liabilities					
Current liabilities:					
Accounts payable and accrued expenses	\$ 472,898	\$ 440,779	\$ 1,155	(d)	\$ 33,274
Accrued personnel costs	4,145				4,145
Taxes payable	96,823	76,641	(20,182)	(e)	
Deferred tax liabilities					