

("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on May 12, 2003, 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 filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

Nasdaq proposes to extend a pilot amendment to NASD rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until August 15, 2003. Accordingly, there is no new proposed rule language. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through August 15, 2003.

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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.⁶ On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.⁷ Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1.⁸ Since that time, the pilot period for the rule has been extended on several occasions.⁹

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the

rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹⁰ including section 15A(b)(6),¹¹ which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. Nasdaq believes the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

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

In a letter dated July 27, 2001, Instinet Corporation ("Instinet") commented on the proposed rule change as originally proposed and currently in effect.¹² Nasdaq has filed a proposed rule change to modify the rule in certain respects and to make the proposed rule change permanent.¹³ Nasdaq believes that the amendments to the rule proposed in SR-NASD-2001-75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. On October 2, 2002, the American Stock Exchange ("Amex") submitted a letter comment on SR-NASD-2001-75.¹⁴ On April 11, 2003, Nasdaq filed an amendment to SR-NASD-2001-75 that responds to the

⁶ See Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR-NASD-2001-37).

⁷ See July 27, 2001, letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation ("Division"), Commission.

⁸ See Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR-NASD-2001-37).

⁹ See Securities Exchange Act Release Nos. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001)(SR-NASD-2001-60); 45344 (January 28, 2002), 67 FR 5022 (February 3, 2002)(SR-NASD-2002-14); 45851 (April 30, 2002), 67 FR 31858 (May 10, 2002)(SR-NASD-2002-57); 46559 (September 26, 2002), 67 FR 63003 (October 9, 2002)(SR-NASD-2002-125); and 46851 (November 19, 2002), 67 FR 70794 (November 26, 2002)(SR-NASD-2002-159).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² See July 27, 2001, letter from Jon Kroeper, First Vice President, Regulatory Policy/Strategy, Instinet, to Jonathan G. Katz, Secretary, Commission.

¹³ See Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002)(SR-NASD-2001-75).

¹⁴ See October 2, 2002, letter from Richard T. Chase, Executive Vice President, Member Firm Regulation, Amex, to Jonathan G. Katz, Secretary, Commission.