

SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to an Amendment to the Automated Confirmation Transaction Service Concerning Late Trade Reports

July 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 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, II, and III below, which Items have been prepared by Nasdaq. On June 26, 2003, Nasdaq amended the proposal.³ Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(1) thereunder,⁵ as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. 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 Proposal

Nasdaq proposes to modify the Automated Confirmation Transaction Service ("ACT") to append the .SLD modifier, as appropriate, to trade reports submitted to ACT. There is no proposed rule language.

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 its proposal and discussed any comments it received regarding the proposal. 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

The NASD trade reporting rules are designed to ensure timely and accurate reports of executed trades. Timely and accurate trade reporting is essential to the maintenance of a fair and orderly market. Therefore, NASD rules require members to identify reports of transactions that are not indicative of the current market for the security.⁶ For example, the .SLD trade report modifier must be appended to trade reports that are submitted to ACT more than 90 seconds after the trade was executed. Trade reports that do not include the .SLD modifier are included in the last sale, high price, and low price calculations for a security because Nasdaq's systems assume that trades without this modifier, or any other modifier, are normal trades indicative of the current market. Therefore, when trades are reported late and erroneously do not include the proper modifier (and are therefore included in these calculations), the market can be distorted because the price being reported may be significantly different from the contemporaneous market. The potential misinformation could cause confusion for members, issuers, and investors and could lead to investment decisions being made based upon inaccurate information.

Today, ACT does not automatically append the .SLD modifier to late trade reports. Therefore, the integrity of the information disseminated relies on members complying with their obligation to report trades accurately. NASD conducts surveillance of its members for compliance with the trade reporting rules and does bring disciplinary actions against members that fail to include the .SLD modifier on late trade reports. Nevertheless,

members occasionally fail to include the .SLD modifier on late trade reports and the immediate result is that potentially misleading information is disseminated.⁷ Therefore, to prevent this result, Nasdaq is proposing to modify ACT to append the .SLD modifier automatically for trades executed during normal market hours that are reported late. The .SLD modifier is not used for trades executed in the pre-market and after-hours trading sessions.

To append the modifiers automatically, ACT must be reprogrammed to include a validation parameter that compares the time of execution and trade report time to the modifier field. Once the validation parameter is operative, if a trade report is submitted more than 90 seconds after the time of execution, and the time of execution was during normal market hours, ACT will append the .SLD modifier automatically.

The validation parameter relies on the time of execution to identify improperly reported trades and append the .SLD modifier. Today, nearly all trades reported to Nasdaq include the time of execution, but some are still reported without this information.⁸ Therefore, a small number of improperly reported trades will not be corrected and thus will continue to be included automatically in the last sale, high price, and low price calculations. However, Nasdaq staff will continue to conduct surveillance for these instances and manually correct the calculations, as appropriate, when such errors are discovered. To eliminate the small number of incidences in which ACT cannot identify and correct improperly reported trades, Nasdaq soon will file a proposal to require the time of execution on all trade reports.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ in that the proposed rule change will prevent nearly all late trade reports from being included in the calculations designed to inform investors of the current market for a security. As a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See June 25, 2003 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 26, 2003, the date Nasdaq filed Amendment No. 1.

⁵ 17 CFR 240.19b-4(f)(1).

⁶ See, e.g., NASD Rule 5430(a).

⁷ There are few incidences in which trades are reported without the .SLD modifier. In fact, only .03% of trades are reported more than 90 seconds after execution and only a small number of these late reports do not contain the .SLD modifier. However, while this is not a widespread problem, the quality of information disseminated can be improved by eliminating even the small number of incidences in which late trade reports are erroneously included in the last sale calculation.

⁸ Today, over 99% of the trades submitted to ACT include the time of execution.

⁹ 15 U.S.C. 78o-3(b)(6).