

respectively, may seek. In light of the shift of certain regulatory responsibilities from Market Operations to *MarketWatch*, as described in the preceding paragraph, the examples contained in NASD Rule 4625 need to be realigned accordingly, since certain types of information that previously would likely have been sought by Market Operations, would now be most likely needed by *MarketWatch* as it exercises its newly-acquired authority (which would shift to it from Market Operations) under the proposed rule change.

Furthermore, Nasdaq wishes to clarify the language in one of the examples contained in NASD Rule 4625. The example currently contained in paragraph (a)(2)(D) of NASD Rule 4625⁷, refers to information relating to “the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890.” NASD Rule 5262 focuses on InterMarket trade-through complaints. Rules 5265 and 11890, however, make no reference to trade-through complaints but rather focus on the authority to adjust other transactions. As such, a clarification is desirable in order to identify specifically Nasdaq’s authority to seek, and members’ obligation to provide, information relating to “the resolution of a trade-through complaint, *or other transaction*, pursuant to NASD Rules 5262, 5265, and 11890.”

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ including sections 15A(b)(2) and (6) of the Act,⁹ which require, respectively, that (i) NASD be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD and (ii) the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that, at this time, *MarketWatch*, rather than Market Operations, is the most appropriate department to handle certain regulatory responsibilities referenced above. As such, the organizational realignment and the corresponding proposed rule changes are consistent with the requirements of the Act. Furthermore, the proposed clarifying change in the language of the example currently contained in NASD Rule 4625(a)(2)(D) will make that rule’s meaning more transparent, thereby helping advance the investor protection and public interest objectives of the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act¹⁰ and Rules 19b-4(f)(1) and (3) thereunder¹¹ in that it, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, concerns solely with the administration of the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 4, 2003, when Amendment No. 1 was filed.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-125 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48468; File No. SR-NASD-2003-113]

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. To Codify Nasdaq’s Existing Authority To Implement a “Quote-Only Period” Before the Start of Trading in Initial Public Offerings on Nasdaq

September 10, 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 July 21, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange

⁷ Under the proposed rule change, this example would be moved to paragraph (a)(1)(G) of NASD Rule 4625.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(2) and (6).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

¹¹ 17 CFR 240.19b-4(f)(1) and (3).

¹² See n.3, *supra*.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.