

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49622; File No. SR-NASD-2004-063)

April 27, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify NASD Rule 4619 to Correct a Typographical Error

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder², notice is hereby given that on April 14, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), submitted to 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. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3)⁴ thereunder, as one concerned solely with the administration of the self-regulatory organization, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 4619 to correct a typographical error in the rule text.

Below is the text of the proposed rule change. Proposed new language is italics; proposed deletions are in [brackets].⁵

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4619. Withdrawal of Quotations and Passive Market Making

(a) – (b) No change

(c) Excused withdrawal status based on circumstances beyond the market maker's control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph [(d)](e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

⁵ Nasdaq has stated that changes are marked from the text of Rule 4619(c) that was approved in Securities Exchange Act Release No. 49427 (March 16, 2004), 69 FR 13606 (March 23, 2004), which is not yet reflected in the electronic NASD Manual available at www.nasd.com. Nasdaq represents that there are no other pending or approved rule filings that would affect the text of this Rule.

(1) – (3) No change

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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

The proposed rule change seeks to correct a typographical error in NASD Rule 4619(c). The cross reference to “paragraph (d)” in NASD Rule 4619(c) should be deleted and replaced with a cross reference to “paragraph (e)” to reflect a previously approved rule change adding a new paragraph (b).⁶

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general and, in particular, with Section 15A(b)(6) of the Act,⁸ in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in

⁶ See Securities Exchange Act Release No. 49427 (March 16, 2004), 69 FR 13606 (March 23, 2004).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest. The proposed rule change clarifies NASD Rule 4619(c) by correcting a typographical error.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(3)¹⁰ thereunder as one concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 C.F.R. 240.19b-4(f)(3).

- Send an E-mail to rule-comments@sec.gov. Please include File Number NASD-2004-063 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number NASD-2004-063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number NASD-2004-063 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).