

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50621; File No. SR-NASD-2004-151)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by the National Association of Securities Dealers, Inc. Making  
Technical Modifications to the NASD Trade Reporting Rules

November 2, 2004

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2004, 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. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the rule effective upon Commission receipt of this filing. 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 make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members’ trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR-

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

NASD-2004-076 (the “name change” filing”)<sup>5</sup> was filed without including the language changes previously approved as part of SR-NASD-2003-159.<sup>6</sup> In addition, the filing makes two technical corrections to the text of NASD Rules 5430(b)(10) and 6620(e)(5) to correct placement errors made in SR-NASD-2004-076.<sup>7</sup> The text of the proposed rule change is available at the NASD and at the Commission.

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. 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

Nasdaq proposes to make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members’ trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR-NASD-2004-076<sup>8</sup> was filed without including the language previously approved as part of SR-NASD-2003-159.<sup>9</sup>

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<sup>5</sup> Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

<sup>6</sup> Securities Exchange Act Release No. 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004).

<sup>7</sup> See footnote 5, supra.

<sup>8</sup> Id.

<sup>9</sup> See footnote 6, supra.

On April 19, 2004, the Commission approved SR-NASD-2003-159,<sup>10</sup> which filing created several new trade report modifiers and expanded the use of certain existing modifiers. For example, Nasdaq created the .ST modifier, which it will attach to late reports of pre-open and after-hours trades. The filing also proposed expanding use of the .W modifier to identify Stop Stock Transactions, and allowing the .PRP modifier to be used for exchange-listed securities. These modifications pertain only to reports submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT"), and do not affect reports submitted to the NASD's alternative display facility. The appropriate language changes were included in the filing – SR-NASD-2003-159.<sup>11</sup>

Subsequent to the Commission approving SR-NASD-2003-159, Nasdaq filed, as effective upon filing, SR-NASD-2004-076,<sup>12</sup> re-naming certain Nasdaq systems. For example, Nasdaq's trade reporting system and its execution system were known as ACT and SuperMontage, respectively. SR-NASD-2004-076<sup>13</sup> eliminated the individual names of these systems, which are referred to collectively now as the Nasdaq Market Center. However, Nasdaq deliberately did not incorporate in the name-change filing the rule language changes approved in SR-NASD-2003-159<sup>14</sup> because, at that time, there were some questions as to when, or if, some of the new modifiers would be implemented.

The .ST modifier, while approved by the Commission, could not be implemented until the respective participants of the Nasdaq UTP Plan and Consolidated Tape

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> See footnote 5, supra.

<sup>13</sup> Id.

<sup>14</sup> See footnote 6, supra.

Association Plan (“CTA Plan”) approved the changes, which approval had not been obtained when the name-change filing was submitted. Nasdaq believed incorporating the rule language changes approved in SR-NASD-2003-159<sup>15</sup> in the name-change filing would create confusion because the language was not effective.

Since the filing of SR-NASD-2004-076,<sup>16</sup> Nasdaq has obtained approval from the Nasdaq UTP Plan and CTA Plan participants to implement the .ST modifier and other modifiers approved in SR-NASD-2003-159.<sup>17</sup> Because of these developments, Nasdaq believes it is appropriate to include the language associated with these modifiers in the NASD rules. However, given that implementation of some of the changes will be delayed for an additional period of time, Nasdaq is adding footnotes after affected text to indicate that the rule language modifications will become effective at a later date. These footnotes were not included in SR-NASD-2003-159,<sup>18</sup> and thus are new language being added by the current filing.

Nasdaq also is adding new language to avoid confusion about when the time of execution must be included on all reports submitted to the Nasdaq Market Center. In SR-NASD-2003-159,<sup>19</sup> the Commission approved Nasdaq’s proposal to require the time of execution on all reports submitted to the Nasdaq Market Center, but Nasdaq also requested that the effective date of this obligation be delayed for one year after Commission approval. The filing contained the changes to the NASD rules that would be

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<sup>15</sup> Id.

<sup>16</sup> See footnote 5, supra.

<sup>17</sup> See footnote 6, supra.

<sup>18</sup> Id.

<sup>19</sup> Id.

appropriate when the obligation is effective. For example, Nasdaq proposed removing language that indicated the time of execution is necessary only when a trade is reported late, and added language indicating that the time of execution is necessary on all reports. Including these language changes in the name-change filing also would have created confusion because the actual effective date of the obligation is not until April 25, 2005. To prevent such confusion, Nasdaq is adding interpretive material indicating that members will be required to provide the time of execution on all trade reports beginning on April 25, 2005, and that the necessary language changes will be made to the NASD rules at a later time.

Finally, Nasdaq is making non-substantive changes to NASD Rules 5430(b)(10) and 6620(e)(5) to correct text placement errors made in SR-NASD-2204-076.<sup>20</sup> In particular, the language of section (10) of NASD Rule 5430(b) will be moved in its entirety to its correct location under subparagraph (a) of that same rule in conformity with SR-NASD-2003-154,<sup>21</sup> the rule filing that created it. For NASD Rule 6620, Nasdaq proposes to remove the incorrectly placed language of subparagraph (e)(5) that duplicates the correct rule language already in place in subparagraph (b)(5) of that same rule.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>22</sup> in general, and with Section 15A(b)(6) of the Act,<sup>23</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices,

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<sup>20</sup> See footnote 5, *supra*.

<sup>21</sup> Securities Exchange Act Release No. 48823 (November 21, 2003), 68 FR 67249 (December 1, 2003).

<sup>22</sup> 15 U.S.C. 78o-3.

<sup>23</sup> 15 U.S.C. 78o-3(b)(6).

to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq believes the proposal is consistent with these obligations because it consolidates the rule language changes of two previously approved NASD filings and clarifies the effective date of certain of the proposals.

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

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>24</sup> and Rule 19b-4(f)(3) thereunder,<sup>25</sup> in that it is concerned 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 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.

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<sup>24</sup> 15 U.S.C. 78s (b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(3).

#### 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-151 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 SR-NASD-2004-151. 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 the 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 SR-NASD-2004-151 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.<sup>26</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).