

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49844; File No. SR-NASD-2004-021)

June 10, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and  
Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc.  
Relating to Reporting of Cancelled Trades

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 February 4, 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. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change Regarding Reporting of Cancelled Trades

Nasdaq proposes to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. The text of the proposed rule change is below. Proposed new language is italicized.<sup>4</sup>

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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> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Commission, dated May 18, 2004 (“Amendment No. 1”). Amendment No. 1 replaced Nasdaq’s February 4, 2004 filing in its entirety. Amendment No. 1 is incorporated into this notice.

<sup>4</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at [www.nasd.com](http://www.nasd.com), and also reflects a proposal to rename the Automated Confirmation Transaction Service to the

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**4630. Reporting Transactions in Nasdaq National Market Securities**

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**4632. Transaction Reporting**

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**(g) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on

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Nasdaq Market Center as contained in proposed rule change filing SR-NASD-2004-076.

the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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**4640. Reporting Transactions in Nasdaq SmallCapSM Market Securities**

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**4642. Transaction Reporting**

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**(g) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the

Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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**4650. Reporting Transactions in Nasdaq Convertible Debt Securities**

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**4652. Transaction Reporting**

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**(g) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with

the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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**6100. Trade Reporting Service**

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**6130. Trade Report Input**

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**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**



With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rules 5430, 6420, or 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430, 6420, or 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines established in Rules 4632, 4642, 4652, 6420, and 6620 for reporting cancelled trades.

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**6420. Transaction Reporting**

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**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market

Center. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6420 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date

of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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**6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER EQUITY SECURITIES**

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**6620. Transaction Reporting**

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**(f) Reporting Cancelled Trades****(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later

than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Market participants make trading and investment decisions based in part on information disseminated by Nasdaq about trades executed in its market. To improve the quality of this information, Nasdaq is proposing to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center.

Specifically, Nasdaq is proposing to require members to notify Nasdaq, through a submission, when they cancel a trade previously reported to Nasdaq.<sup>5</sup> The member that originally had the obligation to report the trade also will have the responsibility to report the cancellation of the trade.<sup>6</sup> Nasdaq proposes to set different deadlines – 5:15 p.m. same day, 6:30 p.m. same day, or 6:30 p.m. of the next trading day – depending on when the original trade is executed and when the decision to cancel occurs. The 5:15 p.m. deadline corresponds to the final dissemination of market pricing information for trades executed during normal market hours (9:30 a.m. – 4:00 p.m.), such as high/low/last sale and Nasdaq Official Closing Price (“NOCP”) values. The 6:30 p.m. deadline

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<sup>5</sup> Members will not be required to submit a cancellation report if Nasdaq cancels a trade using its authority under NASD Rule 11890. In such situations, Nasdaq submits the cancellation report.

<sup>6</sup> For cancelled trades executed through the Nasdaq Market Center execution service, which automatically submits trade reports, the member that would have been responsible for submitting the original report (but for the system reporting the trade) will be responsible for initiating the cancellation. For example, when a trade executed between two market makers in the Nasdaq Market Center execution service is subsequently cancelled, the sell side member is responsible for initiating the cancellation.

corresponds to the final dissemination of volume totals, and the close of the Nasdaq Securities Information Processor and the Nasdaq trade reporting system.

There are four possible scenarios. First, for a trade executed during normal market hours that is reported as cancelled prior to 5:15 p.m. on the same day the trade occurred, the cancellation could impact high/low/last sale values and possibly NOCP values. So that Nasdaq can quickly and accurately reflect the cancellation, Nasdaq proposes a 90 second reporting obligation (with best efforts to report cancellations that occur after 5:13:30 p.m. and before 5:15 p.m.).

Second, for a trade executed during normal market hours that is cancelled after 5:15 p.m. on the same day the trade occurred, the cancellation is to be reported by 6:30 p.m. on the following trading day. The trading community and investing public require finalized pricing information (i.e., high/low/last and closing prices) at a time reasonably related to the 4:00 p.m. close of regular market-hours trading. Allowing a firm to submit a cancelled report of a market hours trade after 5:15 p.m. on trade date would require Nasdaq to adjust its prices up until this new time, a departure from long-standing industry practices and inconsistent with the 5:15 p.m. deadline for reporting a market-hours trade.<sup>7</sup> Next day reporting of the cancellation adequately corrects the regulatory audit trail, but does not impact the previous day's reported price information.

Third, for a trade executed outside of normal market hours that is cancelled prior to 6:30 p.m. on the day of the trade, the cancellation is to be reported prior to the close of Nasdaq's reporting system at 6:30 p.m. The 6:30 p.m. time is consistent with the report

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<sup>7</sup> The deadline for the cancellation of these trades to affect volume is set at 5:15 p.m. to remain consistent with the 5:15 p.m. deadline for dissemination of high/low/last and NOCP that also applies to these trades.

time for trades executed outside of normal market hours. Trades that occur outside of normal market hours (i.e., .T trades) do not impact high/low/last sale or NOCP values, but do impact volume. If, however, the trade is cancelled after 6:30 p.m. on the day of the trade, the cancellation is to be reported by 6:30 p.m. on the next following day.

Fourth, for any trade, whether a normal market hours trade or a .T trade, cancelled after 6:30 p.m. or on a day subsequent to the day the trade occurred, there is no impact to high/low/last sale, NOCP values or volume. Since the only correction made is to the audit trail, these cancellations are to be reported either by 6:30 p.m. on the day in which the decision to cancel is made, provided the decision to cancel occurs before 6:30 p.m., or the next following day if the decision occurs after 6:30 p.m. Nasdaq will issue additional guidance informing members of any technical requirements for reporting the cancellation of a trade, as appropriate.

This reporting requirement will improve the accuracy of the information disseminated by Nasdaq. Today, members are not required to notify Nasdaq when the parties agree to cancel a trade. The lack of a reporting obligation creates a problem when the original trade, now cancelled, has already been reported to Nasdaq, included in the high and low price calculations for the security, and disseminated to market participants. During its routine surveillance, Nasdaq has found that in some situations cancelled trades have set a new high or low price for a security; Nasdaq believes a cancelled trade should not set these values. When Nasdaq discovers this situation, it removes the cancelled trade from the high and low price calculations and corrects its audit trail. However, Nasdaq cannot take these remedial measures if it does not know that a trade has been cancelled.



Nasdaq's proposal will provide it the requisite notice so that it can take any actions necessary to correct the information disseminated and to correct its audit trail.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(6) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. The proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

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<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(6).

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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. 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-2004-021 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-2004-021. 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 Amex. 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-2004-021 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>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).