

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50606; File No. SR-NASD-2004-074)

October 29, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Clarify and Modify Market Maker Quote Re-Entry Obligations

On April 28, 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”), 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> a proposed rule change to NASD Rule 4620 to clarify and modify market maker quote re-entry obligations in the event that a quote is withdrawn by Nasdaq’s systems because of a dividend application or a trading halt. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change. The Federal Register published the proposed rule change, as amended, for comment on September 21, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> In particular, the Commission believes that the proposed rule change is

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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> Securities Exchange Act Release No. 50372 (September 14, 2004), 69 FR 56468 (“Notice”).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that NASD's rules be designed to promote just and equitable principles of trade, 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. The Commission believes that the proposed rule change appropriately establishes the time frames by which market makers must re-enter two-sided quotations when quotes are withdrawn by Nasdaq's systems due to dividend applications and trading halts. The Commission notes that, under the proposal, if a market maker failed to enter a new quotation prior to the close of the regular market session on the day of the systems withdrawal or, generally, on the day when trading resumed following a trading halt,<sup>6</sup> the market maker could be reinstated only when Nasdaq MarketWatch received a request from the market maker prior to the close of regular trading on the next day and Nasdaq MarketWatch determined that the market maker was not attempting to avoid its market making obligations by failing to re-enter a two-sided quotation earlier.<sup>7</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed

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<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> If the resumption of trading following a trading halt occurs when the market is not in regular session, the market maker would need to enter the new two-sided quotation prior to the opening of the next regular session.

<sup>7</sup> Nasdaq has stated that it will monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases will deny immediate reactivation and deem the market maker's registration in the security as having been voluntarily terminated. See Notice.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

rule change (SR-NASD-2004-074) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).