

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49581; File No. SR-NASD-2003-159)

April 19, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Permit Nasdaq to Append a New Modifier to Trade Reports of Pre-Open and After-Hours Trades Not Submitted to Nasdaq's Automated Confirmation Transaction Service, and Other Changes Regarding Trade Reporting

On October 16, 2003, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to permit Nasdaq to append a new modifier to trade reports of pre-open and after-hours trades not submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT") within 90 seconds after execution, and to require members to: (1) include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of "stop stock transactions;" (3) append the .W modifier, as appropriate, to reports submitted to ACT after 5:15 P.M.;³ and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time. On February 5, 2004, Nasdaq amended the proposed rule change.⁴ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq also is proposing to clarify that members must append the .W modifier to a trade report if a trade can be properly reported with both a .T modifier and a .W modifier. This clarification is necessary because ACT can accept only one modifier per trade report. See infra note 14.

⁴ See February 4, 2004 letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1").

proposed rule change, as amended, was published for notice and comment in the Federal Register on March 17, 2004.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁶ the requirements of Section 15A of the Act,⁷ in general, and Section 15A(b)(6) of the Act,⁸ 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 Commission believes the proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁹, that the

Amendment No. 1 completely replaced and superseded the original proposed rule change.

⁵ See Securities Exchange Act Release No. 49404 (March 11, 2004), 69 FR 12727.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NASD-2003-159), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).