

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49796; File No. SR-NASD-2004-083)

June 2, 2004

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Non-Standard Settlement Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 24, 2004, the National Association of Securities Dealers ("NASD") 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 primarily by NASD. NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act² and Rule 19b-4(f)(6)³ thereunder, whereby the proposal is effective upon filing with the Commission. 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

The proposed rule change allows members to submit to the Nasdaq Market Center trade reporting service trades that settle on other than the standard T+3 basis for comparison and transmission to the National Securities Clearing Corporation ("NSCC"). Non-standard settlement trades include cash, next day, and sellers-option transactions.

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

In its filing with the Commission, NASD included statements concerning the purpose of

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)

³ 17 CFR 240.19b-4(f)(6).

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. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq proposes to amend the NASD rules that govern the use of the Nasdaq Market Center trade reporting service to allow members to submit non-standard settlement trades for comparison in the service and to allow Nasdaq to transmit such trades to NSCC. The Commission recently approved a proposal by NSCC to accept non-standard settlement input of over-the-counter trades from, among others, self-regulatory organizations submitting such information on behalf of their members.⁵ The current Nasdaq Market Center trade reporting service rules state that non-standard settlement trades will not be compared by the service or be transmitted to NSCC. By removing this language, Nasdaq will be able to accept such trades from members for comparison and transmit the trades to NSCC. As a result, NSCC and NASD members will be able to realize the full benefits of NSCC's new service.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act⁶ and with Section 15A(b)(6) in particular because 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. The proposed rule change

⁴ The Commission has modified parts of these statements.

⁵ Securities Exchange Act Release No. 49685 (May 11, 2004), 69 FR 27964 (May 17, 2004) [File No. SR-NSCC-2004-02].

⁶ 15 U.S.C. 78c-3.

will allow members to submit non-standard settlement trades to the Nasdaq Market Center trade reporting service for comparison and transmission to NSCC, which will improve the comparison of these trades. The proposal also allows NSCC and NASD members to achieve the full benefits of NSCC's new service.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ promulgated thereunder because Nasdaq has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The NASD gave the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested a waiver of the 30-day operative delay. The Commission believes that such a waiver is consistent with the protection of investors and the public interest, will permit NASD to put the proposed rule change into effect prior to June 2, 2004, which is the first date that NASD will transmit non-standard settlement trades for comparison to NSCC, and that such a waiver will also permit NASD to provide adequate advance notice of this change to its members prior to that date. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.⁹

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. Please include File Number SR-NASD-2004-083 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.

⁹ For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASD-2004-083. 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-2004-083 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).