

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50059; File No. SR-NASD-2004-021)

July 22, 2004

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

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”), 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 require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on June 17, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ See Securities Exchange Act Release No. 49844 (June 10, 2004), 69 FR 33980.

The Commission finds that that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ applicable to a national securities association.⁶ In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act⁷ which requires, among other things, that the rules of a securities association be 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, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should improve the quality and accuracy of information disseminated by Nasdaq about transactions in its market. Under the proposal, members must notify Nasdaq, through a submission, when they cancel a trade previously reported to the Nasdaq Market Center.⁸ The member that originally had the obligation to report the trade also will bear the responsibility to report the cancellation of the trade.⁹ The Commission believes that, by assuring Nasdaq has timely notice of cancelled trades, this reporting requirement should improve the accuracy of the information disseminated by

⁵ 15 U.S.C. 78o-3.

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

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ Under the proposal, 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 would submit the cancellation report.

⁹ 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.

Nasdaq to market participants and should help to ensure that Nasdaq maintains an accurate audit trail.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change, as amended, (SR-NASD-2004-021) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).