

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50074; File No. SR-NASD-2004-076)

July 23, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendments No. 1 and 2 thereto, by the National Association of Securities Dealers, Inc. to Rename Certain of Nasdaq's Systems and to Make Other Technical Corrections

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 6, 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. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(3) thereunder,⁴ as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. Nasdaq filed Amendment No. 1 to the proposed rule change on July 2, 2004.⁵ Nasdaq filed Amendment No. 2 to the proposed rule change on July 23, 2004.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 2, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made various technical and clarifying amendments to the proposed rule text.

⁶ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 21, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made additional clarifying amendments to the proposed rule text.

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

Nasdaq proposes to rename certain of its systems and to make other technical corrections to certain of its rules. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, at the Commission, and on the Commission’s Web site, www.sec.gov.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is generally discontinuing the use of the terms “SuperMontage,” “Nasdaq National Market Execution System,” “NNMS,” and “ACT” in its rules and replacing them in many instances with the term “Nasdaq Market Center.” The proposed rule change also makes several technical corrections to punctuation and paragraph designations and other conforming changes. These changes include, in NASD Rule 4701, a consolidation of former paragraphs (r), (d), (x) and (ee) into a single paragraph (r) with four subsections setting forth the four functionalities that the newly-named Nasdaq Market Center comprises: (1) an order execution service as already described in paragraph (r); (2) a trade reporting service formerly designated by the term “Automated Confirmation Transaction” Service or “ACT” and described in paragraph

(d) and other rules; (3) for Nasdaq-listed securities, a quotation montage formerly designated by the term “Nasdaq Quotation Montage” and described in paragraph (x); and (4) for Nasdaq-listed securities, an order display service formerly designated by the term “Nasdaq Order Display Facility” and described in paragraph (ee).⁷ In tandem with these changes, Nasdaq is also revising the terms by which its rules refer to certain participants in the former NNMS. For example, the former term “NNMS Market Maker” will be replaced by “Nasdaq Market Maker.” The former term “NNMS ECN” will be replaced by “Nasdaq ECN.” Nasdaq did not change certain proper names, including the names of preexisting agreements and equipment; rather, it will make corrections to the Rules as appropriate once the agreements and equipment are renamed.

In addition, Nasdaq is making technical corrections to NASD Rules 5210 and 5220. On March 2, 2004, the Commission approved Nasdaq’s proposal to transition the trading of exchange-listed securities onto the SuperMontage trading platform from the Computer Assisted Execution System. The text of the SuperMontage rules approved as part of that proposal, as published in Exhibit A to Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004) (“Exhibit A”), contained minor technical errors. Exhibit A did not accurately reflect the text of NASD Rules 5210 and 5220 that had previously been approved by the Commission and were in effect.

Specifically, Exhibit A added a definition of the term “CAES” as new NASD Rule 5210(i) when NASD Rule 5210(i) already was in effect. Prior to the filing of SR-NASD-2003-

⁷ The description of the proposed rule change has been supplemented pursuant to a telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq and Ira Brandriss, Assistant Director, Division, Commission, on July 13, 2004. As further discussed below, Nasdaq represents that none of the proposed changes alters the operation of the systems described or the rights and obligations of those using them.

149, NASD Rule 5210(i) set forth the definition of the term "Third Participating Market Center Trade-Through." Therefore, Nasdaq is re-establishing the definition of the term "Third Participating Market Center Trade-Through" as NASD Rule 5210(i) and re-lettering the definition of CAES from NASD Rule 5210(i) to NASD Rule 5210(j).

Similarly, NASD Rule 5220(c) is added as a new provision, re-lettering then-existing paragraphs (c) through (g) as (d) through (h). Exhibit A inadvertently failed to identify and re-letter two additional paragraphs -- paragraphs (h) and (i) -- that the Commission had already approved in connection with SR-NASD-1999-075.⁸ Therefore, Nasdaq is re-establishing the text of those provisions as NASD Rule 5220(i) and (j).

According to Nasdaq, nothing in the proposal to re-name Nasdaq's systems or to make other technical corrections alters the current operation of those systems or the rights and obligations of those using them. As such, the proposed rule change is solely administrative, technical, conforming and non-substantive in nature.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,⁹ in general, and with Section 15A(b)(6) of the Act,¹⁰ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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. Clarifying the rules helps market participants.

⁸ See Exchange Act Release No. 42536 (March 16, 2000), 69 FR 15401 (March 22, 2000).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(3)¹² thereunder as one concerned solely with the administration of the self-regulatory organization. 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 the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 C.F.R. 240.19b-4(f)(3).

¹³ For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 23, 2004, the date Nasdaq submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

Send an E-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-076 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-2004-076. 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 Commissions 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-2004-76 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).