

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52303; File No. SR-NASD-2005-057)

August 18, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Summary Orders in the Nasdaq Market Center

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 April 22, 2005, 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. 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

Nasdaq proposes to allow all eligible market participants in the Nasdaq Market Center to enter attributable and non-attributable Summary Orders in Nasdaq-listed and exchange-listed securities. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

4700. NASDAQ MARKET CENTER – EXECUTION SERVICES

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) – (nn) **No Change.**

(oo) The term “Summary” shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by the Nasdaq Market Center, it shall be rejected and returned to the entering party. [Summary Orders may only be entered by Nasdaq Order-Delivery ECNs.]

(pp) – (uu) **No Change.**

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4706. Order Entry Parameters

(a) Non-Directed Orders —

(1) General. The following requirements shall apply to Non-Directed Orders Entered by Nasdaq Market Center Participants:

(A) **No Change.**

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", "Day", "Good-till-Cancelled", "Auto-Ex", "Fill or Return", "Pegged", "Discretionary", "Sweep", "Total Day", "Total Good till Cancelled", or "Total Immediate or Cancel," or "Summary."

(i) – (xii) **No Change.**

(xiii) An order may be designated as "Summary," in which case the order shall be designated either as Day or GTC. A Summary Order

that is marketable upon receipt by the Nasdaq Market Center shall be rejected and returned to the entering party. If not marketable upon receipt by the Nasdaq Market Center, it will be retained by the system. [Summary Orders may only be entered by Nasdaq Order-Delivery ECNs.]

(C) – (F) **No Change.**

(2) **No Change.**

(b) – (e) **No Change.**

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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 proposing to allow all participants in the Nasdaq Market Center to enter attributable and non-attributable Summary Orders, and to make Summary Orders available for exchange-listed securities. Nasdaq represents that, today, Summary Orders in essence provide a warning that the price of the order in a Nasdaq security would lock or cross the best prices then displayed in the Nasdaq Market Center by rejecting such an order back to the entering party. If the Summary Order does not lock or cross the best price, it is retained by the system for normal

processing. The use of Summary Orders is currently restricted to Nasdaq Order Delivery ECNs. Approval of this proposal would give all Nasdaq Market Center participants the ability to enter such orders on either an attributable, or non-attributable, basis and make Summary Orders available for exchange-listed securities.

Nasdaq represents that, under current Nasdaq Market Center processing, quotes already provide the lock/cross warning via rejection attributes of the Summary Order. Orders that are not designated as Summary, however, do not provide similar lock/cross warning capabilities and are considered immediately executable indications of trading interest that would be executed by the system if they locked or crossed the Nasdaq inside market.

Nasdaq believes that the ability to receive a warning via order rejection when entering a locking or crossing order is an important component in enhancing Nasdaq market participants' control over how their orders are processed in the Nasdaq Market Center. Nasdaq represents that, through the availability of the Summary Order lock/cross warning, market participants can themselves determine if they desire to immediately execute against available trading interest, or instead provide liquidity via a posted order. Nasdaq believes that this control is especially important in today's trading environment, where smaller spreads accentuate transaction costs. Such costs can be minimized by being a provider of liquidity that, in some cases, entitles the submitting party to an execution fee rebate, thereby reducing overall transaction costs. As noted above, lock or cross warnings similar to those provided by the Summary Order are available today to Nasdaq market participants that use quotes when representing trading interest in the Nasdaq Market Center. By also making lock/cross warnings via order rejection an option for orders entered by market participants, Nasdaq believes that the ability of market participants

would be enhanced to obtain better, more economically efficient executions for themselves and their customers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,³ in general, and with Section 15A(b)(6) of the Act,⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that the increased control given to all market participants through the use of Summary Orders would assist in improving execution quality for themselves and their customers. In addition, to the extent that expansion of the Summary Order to attributable orders encourages the submission of greater amounts of trading interest in the form of such orders into the Nasdaq Market Center, Nasdaq believes that all market participants can be expected to benefit from such increased system liquidity.

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 either solicited or received.

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

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(6).

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-057 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-057. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2005-057 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.⁵

Margaret H. McFarland
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).