

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52376; File No. SR-NASD-2005-102)

September 1, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Allow Members to Report Certain Trades in Exchange-Listed Securities Through the Execution Services of the Nasdaq Market Center

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 26, 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. On August 31, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(5)<sup>5</sup> thereunder, and therefore the proposed rule change is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 clarified the scope of NASD Rule 4720 prior to adoption of the proposed rule change, corrected typographical errors, and made other clarifying changes in response to comments from the Commission staff.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(5).

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

Nasdaq proposes changes to NASD Rule 4720. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].<sup>6</sup>

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**4720. Reporting Through the Execution Services of the Nasdaq Market Center**

Subject to the conditions set forth below, members may utilize the Nasdaq Market Center to report trades in Nasdaq Market Center eligible securities required or eligible to be reported to Nasdaq pursuant to the Rule 4630, 4640, 4650, [and] 6100 and 6400 Series.

(1) Members shall include the time of execution on reports submitted to the Nasdaq Market Center; and

(2) For transactions between members, the members who are parties to the trade shall agree to all trade details prior to submitting the report to the Nasdaq Market Center, and have in effect and on file with Nasdaq, an Automated Confirmation Transaction Service Service Bureau/Executing Broker Supplement to the Nasdaq Workstation II Agreement (“Attachment 2 Agreement”), and a Nasdaq National Market Execution System Give-Up Addendum to the Nasdaq Workstation II Subscriber Agreement (“SuperMontage Give-Up Agreement”).

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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

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<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasd.com](http://www.nasd.com).

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 provide members the ability to use the execution services of the Nasdaq Market Center to report trades in exchange-listed securities that were matched outside of any system operated by a self-regulatory organization. Currently, Nasdaq members' ability to use the order execution service to report matched trades is limited to trades in Nasdaq National Market and SmallCap Market securities, convertible bonds listed on Nasdaq, and other reportable securities identified in the NASD Rule 6100 Series.<sup>7</sup>

Under Nasdaq's proposal, matched trades in exchange-listed securities that are reported through the execution services of the Nasdaq Market Center will be transmitted to the trade reporting service and processed in the same manner as information about matched trades in Nasdaq and other eligible securities submitted to that system. For example, trade information will be disseminated on the consolidated tape, and included in the reporting service's risk management calculations and Nasdaq's audit trail. In addition, the trades will be submitted to the National Securities Clearing Corporation ("NSCC") for clearing, if necessary. Trades in

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<sup>7</sup> A detailed description of how matched trades in Nasdaq and other eligible securities are reported through the execution services of the Nasdaq Market Center is contained in Securities Exchange Act Release No. 49733 (May 19, 2004), 69 FR 29990 (May 26, 2004) (SR-NASD-2004-034). The reporting of matched trades in exchange-listed securities proposed in this rule change is intended to operate in the same manner.

exchange-listed securities reported through the order execution service will not be included in the execution algorithm, and thus will not interact with any Quotes/Orders in the system.

Under this rule change, members will not be permitted to report through the execution services of the Nasdaq Market Center trades in exchange-listed securities for which comparison is necessary. As is the case for trades in Nasdaq and other eligible securities, the order execution service will accept only: (1) tape only reports;<sup>8</sup> (2) locked-in clearing only reports;<sup>9</sup> (3) tape reports of locked-in trades that are to be submitted to clearing;<sup>10</sup> and (4) non-tape, non-clearing reports.<sup>11</sup> Members will be able to report trades through the execution services of the Nasdaq Market Center during the hours that the trade reporting service is operational, which presently is 8:00 a.m. until 6:30 p.m. Eastern time.

By extending this functionality to reporting of matched trades in exchange-listed securities, members will be able to take advantage of several benefits that previously were limited to reporting matched trades in Nasdaq and other eligible securities. For example, it will

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<sup>8</sup> A “tape only report” is a trade that is reported to Nasdaq for dissemination to the public, but the trade does not need to be transmitted to NSCC because one of the parties to the trade is a customer (*i.e.*, not a broker-dealer), or the buyer and seller both are broker-dealers and they have a common clearing arrangement that will enable them to settle the trade without using NSCC’s facilities.

<sup>9</sup> A transaction is “locked-in” when the buying and selling broker-dealers have agreed to all the trade details prior to submitting the trade to Nasdaq and no further comparison is necessary. A “locked-in clearing only report” is a report that is locked-in and Nasdaq must forward the trade to NSCC for settlement. The trade does not have to be disseminated to the public because an exception to the public reporting requirement is applicable (*e.g.*, the transaction is the offsetting leg of a riskless principal trade).

<sup>10</sup> A “tape report of a locked-in trade that is submitted for clearing” is a locked-in report of a trade that must be disseminated to the public and settled through NSCC.

<sup>11</sup> A “non-tape, non-clearing report” is a report of trade that is not required to be disseminated to the public, and does not need to be transmitted to NSCC for settlement, but the broker-dealer is obligated or chooses to submit this “regulatory report” to Nasdaq. See *e.g.*, NASD Rule 4632 (d)(3)(B) and Notice to Members 00-79.

be possible for members to consolidate the reporting and execution systems for a broader range of trades. In addition, members will be able to take advantage of the existing anonymity feature available in the order execution service by utilizing it for trades transmitted to the trade reporting service, and combine it with the benefits of “give up” relationships, also available to members today in both the order execution and trade reporting services of the Nasdaq Market Center.<sup>12</sup> As a result, members will be able to give up the true contra parties to a trade in exchange-listed securities, but still preserve full anonymity between these parties.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>13</sup> in general and with Section 15A(b)(6) of the Act,<sup>14</sup> in particular, in that it is designed to foster coordination and cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal is consistent with this obligation because it will provide members both the opportunity to consolidate the execution and reporting of a wider range of trades, and will extend the combined benefits of give-up relationships and anonymous trading to reporting of matched trades in exchange-listed securities.

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<sup>12</sup> When a “give up” occurs, the member that submits the order to the order execution service (or the trade report to the trade reporting service) discloses to the contra party that the order (or report) is being entered on behalf of another member and the trade is to be settled with this other member. The member submitting the order (or trade report) has “given up” the identity of the other member who is the true party to the trade.

<sup>13</sup> 15 U.S.C. 78o-3.

<sup>14</sup> 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, as amended, 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, as amended, has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(5)<sup>16</sup> thereunder in that it effects a change in an existing order execution system of Nasdaq that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and it does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the 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.<sup>17</sup>

IV. Solicitation of Comments

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>16</sup> 17 CFR 240.19b-4(f)(5).

<sup>17</sup> The effective date of the original proposed rule is August 26, 2005. The effective date of Amendment No. 1 is August 31, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 31, 2005, the date on which Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-102 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2005-102. 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-2005-102 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.<sup>18</sup>

Jonathan G. Katz  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).