

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52526; File No. SR-NASD-2005-057)

September 29, 2005

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

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"), 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> a proposed rule change relating to Summary Orders in the Nasdaq Market Center. Nasdaq has proposed to allow all participants in the Nasdaq Market Center to enter attributable and non-attributable Summary Orders, and to make Summary Orders available for transactions in exchange-listed securities. Currently, the use of Summary Orders is restricted to Nasdaq Order-Delivery ECNs for transactions in Nasdaq-listed securities.

The proposed rule change was published for comment in the Federal Register on August 25, 2005.<sup>3</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>5</sup> in that it is designed to prevent fraudulent and

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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> See Securities Exchange Act Release No. 52303 (August 18, 2005), 70 FR 49957 ("Notice").

<sup>4</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78q-3(b)(6).

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.

The Commission notes that Summary Orders permit an order entering party to receive a warning if the price of the order would lock or cross the best prices then displayed in the Nasdaq Market Center by rejecting the order back to such order entering party.<sup>6</sup> The Commission notes that Summary Orders give the order entering party the choice of either immediately executing against the available trading interest or providing liquidity through a posted order. The Commission notes that Nasdaq has stated that the significance of having such a choice lies in the potential for having reduced transaction costs as a liquidity provider.<sup>7</sup> The Commission notes that Summary Orders are currently only available to Nasdaq Order-Delivery ECNs. The Commission notes that the proposal would extend the ability to enter Summary Orders, on either an attributable or non-attributable basis, to all Nasdaq Market Center participants. The Commission also notes that the proposal would extend the usage of Summary Orders to transactions in exchange-listed securities, in addition to Nasdaq-listed securities.

The Commission believes that the proposal, by extending the availability of Summary Orders to all participants in the Nasdaq Market Center entering into transactions in Nasdaq-listed or exchange-listed securities, should increase the level of control Nasdaq Market Center participants have over the processing of their orders and allow them potentially to enter into more economically efficient transactions.

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<sup>6</sup> If the order does not lock or cross the best price, the system retains it for normal processing.

<sup>7</sup> Nasdaq has stated that liquidity providers may, in some cases, receive an execution fee rebate, thus reducing their transaction costs. See Notice.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2005-057) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).