disputes. Thus, the commission finds good causes to accelerate approval of the Association's proposal.

V. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[16] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–98–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14920 Filed 6–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40047; File No. SR–NASD–98–09]

Self-Regulatory Organizations; Notice of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Trade Reporting Rules

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ''Act''),[1] notice is hereby given that on February 2, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change. Nasdaq filed an amendment to the proposed rule change on May 19, 1998. The proposed rule change, as amended, is 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 is proposing to amend various trade reporting rules of the Association. Specifically the proposal would: (1) Implement a new trade report modifier to identify trades effected at a prior reference price; (2) eliminate the 10,000 share limitation on individual trades that may be ''bunched'' for trade reporting purposes; (3) require electronic communications networks (''ECNs'') to be responsible for reporting all trades executed within the ECN; and (4) address riskless principal trades involving exchange-listed securities traded in the Third Market. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletion are in brackets.

*   *   *   *   *

4623. Electronic Communications Networks

(a) No Change.

(b) An electronic communications network that seeks to utilize the Nasdaq-provided means to comply with the electronic communications network display alternative shall:

(1)–(5) No Change.

(6) report all transactions executed by or through the electronic communications network, with the exception of transactions executed through an automated execution system operated by Nasdaq (e.g., SelectNet).

*   *   *   *   *

4632. Transaction Reporting

(a)(1) through (a)(8) No Change.

(9) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f)(1)(C) No Change.

(D) Orders received or initiated by the reporting member which are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. *The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

Examples: No Changes.

(2) No Change.

*   *   *   *   *

4642. Transaction Reporting

(a)(1) through (a)(8) No Change.

(9) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f)(1)(C) No Change.

(D) Orders received or initiated by the reporting member which are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. *The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

(2) No Change.

*   *   *   *   *

4652. Transaction Reporting

(a)(1) through (a)(7) No Change.

(8) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f) No Change.

*   *   *   *   *

6420. Transaction Reporting

(a) through (d)(3)(A) No Change.

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down. A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

[16] U.S.C. 78*o*–3.

[17] 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Examples: No Change.

(e) No Change.

* * * * *

6620. Transaction Reporting

(a)(1) through (a)(5) No Change.

(6) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (3) No. Change.

* * * * *

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

I. New modifier for trades based on prior reference price. Nasdaq recommends the implementation of a trade report modifier for firms to append to certain trade reports to more accurately identify transactions that are at a price based on a prior reference point in time. The modifier would apply to trade reports in Nasdaq securities (both Nasdaq National Market and SmallCap) as well as non-Nasdaq OTC Equity Securities (*e.g.*, OTC Bulletin Board and Pink Sheets). It would not, however, apply to exchange-listed securities traded in the Third Market.

Recently, there have been situations where members execute certain transactions that, although reported timely, actually relate to an obligation to trade that arose at an earlier point in the day or that refer to a prior reference price. These situations include obligations to trade arising from a preferenced SelectNet order that was not executed timely, orders that are owned the opening or closing price (''market on open'' or ''market on close'') but that are not executed within 90 seconds of the open or close, respectively, and orders that may have been lost or misplaced. In effect, these trades are late executions, not late reports of executions.

After earlier discussions with SEC staff it was agreed that the .SLD modifier could be used to refer to these ''out of sequence'' trade reports on an interim basis, but that Nasdaq should develop a separate identifier to accurately reflect these types of trades.[2] A separate identifier would provide better information to market participants and the public as to what these trades actually represent. Because it would be used to indicate that the price is based on an earlier reference point, the modifier would identify trades whose pries may bear no relationship to the current market.

Accordingly, Nasdaq is proposing a rule change to implement a new trade report modifier (''.P'' for discussion purposes). This modifier must be appended to trade reports that reflect a price that is different from the current market because the execution is based on a prior reference point in time. This would be coupled with a requirement to input the prior reference time. Until a separate time filed in ACT can be established, Nasdaq staff envision that members can use the execution time field to insert the prior reference time for these trades.

In proposing the rule change, Nasdaq intends that the following be made clear:

- Such modifier does not apply to ''stopped'' stock situations.
- By using the modifier, a member is not absolved of its obligation to provide best execution, in terms of both price and timely execution.
- The modifier would not be required to be used if the report was made within 90 seconds of the prior reference time.

The following are some specific examples of when the .P modifier would be used:

1. A member receives a preferenced SelectNet order at the member's quote (''liability order'') at 11:00. The member fails to execute the trade. Thirty minutes later, at 11:30, this is brought to the attention of the receiving member, who agrees that the trade should have taken place at that time at the price existing then. The receiving member then executes a trade at that price. The member appends .P to the trade report and inputs the time ''11:00.''

2. A member receives a large number of customer orders prior to the open, to be executed at the opening print. Once that price can be identified, the member's system begins executing each trade at that price. Amy such trade that is executed at the opening but due to heavy volume is not printed until after 9:31:30 should be identified with the .SLD identifier. If, however, at 9:45 the member discovers that a customer's order that should have been executed at the open has not yet been executed, it would be appropriate to execute that customer's order and append the .P modifier with the time ''9:30.'' This tells market participants that the execution price represents a price that relates to an earlier point in time (in this case, the open), and thus may not bear any relation to the current market, which may have moved in the interim.

The text of the proposed rule changes to implement the new modifier is contained in NASD Rules 4632(a)(9), 4642(a)(9), 4652(a)(8), and 6620(a)(6).

II. Eliminating the 10,000 share limitation on aggregating trades in Nasdaq securities that may be bunched for trade reporting. Nasdaq is proposing to eliminate the 10,000 share limitations on the maximum number of shares in an individual trade that can be aggregated for purposes of reporting a ''bunched'' trade in Nasdaq securities, but only in the context of IPOs.

Rules governing the reporting of transactions in Nasdaq securities (both National Market and SmallCap) currently permit the aggregation of transactions into a ''bunched'' trade report in a variety of situations. Most notably, there is a provision whereby a firm may aggregate transactions at the same price that would be impractical to report individually, provided that no individual order of 10,000 shares or more may be aggregated. Such reports are appealed with a ''.B'' modifier by the reporting firm and are disseminated to the Nasdaq tape and vendors. This rule was originally adopted in 1982 with a limitation of 5,000 shares.[3] It was subsequently increased to 10,000 shares in 1984, but has remained at that level ever since.[4]

Nasdaq believes that it would be appropriate to remove the 10,000 share limitation for bunching on the first day of secondary market trading following an IPO. Bunching would remain optional. This would facilitate more efficient and timely reporting of large numbers of trades in the IPO aftermarket. Nasdaq does not believe

[2] *See* Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Richard G. Ketchum, Vice President, NASD, dated August 11, 1997.

[3] *See* Exchange Act Release No. 18602 (March 26, 1982), 47 FR 14642 (April 5, 1982) (notice of filing and order granting accelerated approval of File No SR–NASD–82–4).

[4] *See* Exchange Act Release No. 21202 (August 3, 1984), 49 FR 31971 (August 9, 1984) (order approving File No. SR–NASD–84–12).

that eliminating the 10,000 share limit will result in any relevant loss in either the amount of value of information disseminated to the public. Also, as it is today, the individual transaction data will continue to be captured for clearing and regulatory purposes.

Nasdaq notes that there are currently no limits in place with respect to bunching on the exchanges. It is Nasdaq's understanding, however, that some exchanges, unlike Nasdaq, reprint all the component trades to a bunched report later in the day. While these individual reports to SIAC, Nasdaq understands that most vendors do not re-disseminate them to public.[5]

The text of the proposed rule changes to implement the proposed bunching provision is contained in rules 4632(f)(1)(D) and 4642(f)(1)(D).

III. Requirement that ECNs report on behalf of subscribers. Nasdaq is proposing a rule requiring ECNs to report all trades executed within the ECN on behalf on its subscribers.

The reporting of trades involving an ECN is inconsistent today, in that not all ECNs assume responsibility for reporting all trades within the ECN. Instead, an NASD member may be responsible for reporting some trades. For example, in these situations, after an ECN executes a trade, it must determine which participant, if any, had the trade reporting obligation, and them notify that participant. That participant would then put up the trade report.

Nasdaq believes that it is more effective and timely for ECNs to be responsible for centrally reporting every trade that takes place through the ECN.[6] Accordingly, Nasdaq is proposing that it be mandated by rule, and that the ECN be held responsible for reporting properly and timely. The text of the rule change is contained in proposed rule 4623(b)(6).

IV. Trade reporting rules for riskless principal trades in the Third Market. Nasdaq is proposing changes to the trade reporting rules for exchange listed securities traded in the Third Market to ensure that all riskless principal trades, including those effected by market makers, are reported only once. This was determined to be necessary for several reasons, including (1) misinterpretation by some of the rules relating to the reporting of Third Market trades of exchange-listed securities involving an execution on an exchange; (2) the new SEC Order Handling Rules, which require market makers to match certain orders in an agency-like fashion as opposed to trading at risk as principal; (3) the impact of SEC Transaction Fees (Section 31 Fees); and (4) the potential for the erroneous perception that Third Market trade reporting may be inflated due to ''double reporting.''

The rules for reporting trades in the Third Market have long existed in their current form. The rules were broadly designed to capture all trading activity by broker-dealers, both dealer to dealer trades and trades with customers. These rules, and the trade reports that result, serve several important purposes. They form the basis for public dissemination of ''last sale'' transaction prices to the tape, thus providing transparency. Trade reports also are an integral part of the audit trail used by the NASD in its regulatory efforts to surveil and regulate firms' activities. Given the historical structure of the dealer market and the need to provide a comprehensive view of all trading, and because market makers were always deemed to be ''at risk,'' NASD trade reporting rules always have required the reporting of all principal trades by market makers.

Non-market makers, however, generally do not report all principal trades under current rules, to the extent the trades are defined as ''riskless,'' that is, they involve a trade with another member, usually a market maker, which is used to offset a trade with a customer. This ''riskless principal exception'' results in one trade report even though the non-market maker firm is involved in two separate trades against its principal account.

Nasdaq sees no significant reason to continue this distinction between market makers and non-market makers in the context of exchange-listed securities, and thus believes it to be appropriate now to extend this riskless principal exception where possible to market makers as well. This determination was reached given the evolution and growth of the Third Market, advances in technology at the firm level, and particularly in light of the new SEC Order Handling Rules. IN short, this would ensure that only one trade report results for transactions that are clearly one trade. As indicated above, current rules mandate that market makers report all principal trades, notwithstanding that such trades may, in effect, be ''riskless'' to the market maker (*i.e.*, although the market maker may execute two offsetting trades against its principal account, the economic reality is that these may be viewed as one trade without risk to the market maker).

V. Extending riskless principal treatment to transactions in exchange-listed securities in the Third Market. Nasdaq believes that the exception applicable to non-market makers (which treats riskless principal trades as one trade for reporting purposes) should be extended to market makers in exchange-listed stocks. For example, if a market maker in an exchange-listed security does not assume a risk position on an ITS commitment sent to another market, the market maker should not be reprinting it in its own market when it receives confirmation of an execution on the commitment. The fact that the firm is a market maker is irrelevant. Nasdaq also believes that this analysis should apply to transactions that result from orders sent to the floor even when sent outside of the ITS linkage (*e.g.*, through a floor broker or other automated execution system of the exchange).

a. *Definition of riskless principal.* To implement the above interpretation, a specific definition of ''riskless principal'' for reporting purposes would be necessary. A riskless principal trade generally is one that involves a conditional order rather than one immediately executable by the firm as principal. Such condition may involve a customer order whose execution is dependent upon finding the other side, or a transaction dependent upon the execution of a part of the order placed with another firm or market. For example, after receiving an order to buy 500 shares, a firm sends an order to an exchange for 1,000 shares. The 1,000 share order is executed, and the member then satisfies the 500 share order. The 1,000 share execution is reported by the exchange; the 500 share execution by the firm should not be printed again in the Third Market.

To the extent that the transaction being triggered is greater than the first leg, only that portion offset by the first leg is deemed riskless; the balance would be ''at risk'' and reported as a separate trade. For example, after having received an order for 1,000 shares, the firm obtains an execution on an exchange for 500 shares. The exchange reports 500 shares; the firm only reports 500 shares in the Third Market because the other 500 shares are deemed riskless.

b. ''Marker'' orders. Nasdaq also considered the extent to which the definition would apply in situations where the first leg is really just a ''marker'' order. These orders, usually of nominal size, are used to trigger obligations to other orders the firm may be holding. Marker orders serve as a mechanism to notify the market maker

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[5] It is believed, however, that the exchange count these re-printed component trades toward their shares of revenue allocation for market data fees.

[6] Should a transaction occur between two ECNs, the ''receiving ECN'' would be responsible for reporting the trade.

that the market has traded at that price and that the conditional order has now become executable in accord with the firm's understanding with its customer. Such orders generally are not intended to offset to any significant degree other executions by the market maker.

Under the definition above, these executions would appear to merit riskless principal treatment to the extent of the size of the marker order. However, given the purpose for which such marker orders are used, Nasdaq believe that these should not require the breakup of the order into two separate components to distinguish between a risk and riskless portion, provided the marker order is no larger than 10% of the size of an execution or group of executions that it would trigger. It was felt that the nominal size of the marker order did not to any material extent change the overall risk profile of the order.

For example, after receiving an order for 5000 shares, a firm places a marker order of 500 shares on an exchange. The marker order, which is executed, then triggers the 5000 share order. The firm would report the 5000 shares in its entirety. In another example, the marker order triggers 10 different orders of 500 shares each for a total of 5000 shares. Similarly, each of these 500 share executions also are reported.

Another example involves how an order of 2500 shares would be reported if 2400 shares were sent to the floor and had been executed. The 2400 shares would be reported by the exchange, and thus the 100 shares would be separately reported as a risk trade by the market maker.

Accordingly, Nasdaq is proposing a rule change and corresponding interpretations as described above to ensure that all riskless principal trades, including those effected by market makers, are reported only once. Specifically, the text of the proposed rule change is in the form of amendments to NASD Rule 6420(d)(3)(B).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [7] in that the proposed rule change will result in more accurate, reliable, and informative information regarding last sale transaction reports. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

Nasdaq does not believe that the proposed rule change 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

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 the self-regulatory organization 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–08 and should be submitted by June 26, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14921 Filed 6–4–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78*o*–3.

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Chief Information Officer of the Social Security Administration Grants to the Social Security Administration a Waiver From the Use of Certain Federal Information Processing Standards

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Chief Information Officer of the Social Security Administration grants to SSA a waiver from the use of the following Federal Information Processing Standards (FIPS):

1. The Secure Hashing Standard (FIPS 180–1);
2. The Digital Signature Standard (FIPS 186); and
3. The Data Encryption Standard (FIPS 46–2).

This waiver is granted pursuant to authority granted to the Secretary of Commerce by 40 U.S.C. section 1441, and delegated to the Commissioner of Social Security in the above referenced FIPS Publications. This authority was redelegated by the Commissioner of Social Security to the Agency's Chief Information Officer. This waiver is granted to allow SSA to use commercial off-the-shelf cryptographic products such as those produced by RSA Data Security, Inc., in lieu of products conforming with the above-cited FIPS.

DATES: This waiver was effective January 26, 1998, and will remain in effect until the commercial off-the-shelf cryptographic products selected by SSA come under a FIPS or until it is rescinded by the Agency's Chief Information Officer.

FOR FURTHER INFORMATION CONTACT: Joan Hash, Systems Security Officer, Social Security Administration, Room 3206 Annex Building, 6401 Security