

(ii) as to which NASD Regulation consents,<sup>42</sup> 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-00-04 and should be submitted by May 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>43</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42618; File No. SR-NASD-00-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Program for the Nasdaq Application of the OptiMark System

April 4, 2000.

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>

<sup>42</sup> NASD Regulation has consented to a 90-day extension of the time period for Commission action. See Amendment No. 2, *supra* n. 4.

<sup>43</sup> 17 CFR 200.30-3(a)(12).

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

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

notice is hereby given that on March 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 30, 2000, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change 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.

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

Nasdaq is proposing to extend the pilot period for the Nasdaq application of the OptiMark System (the "Nasdaq Application") for an additional six months from April 3, 2000. No changes to the existing rule language are being proposed.

#### 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, as amended, 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.

<sup>3</sup> See March 30, 2000 letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6). Nasdaq also requested that the Commission waive the 5-day notice of its intent to file the proposal by treating the original proposed rule change as the pre-filing notice required under Rule 19b-4(f)(6); and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

##### 1. Purpose

On January 5, 1999, the Commission approved a proposed rule change filed by the NASD to implement the Nasdaq Application.<sup>6</sup> The Nasdaq Application permits NASD members and their customers to enter large orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. ("OptiMark Match") and has been integrated into Nasdaq's facilities in Trumbull, Connecticut. The anonymity offered by this facility limits the market impact of trading in larger quantities of securities and provides NASD members with a new, additional tool to trade Nasdaq securities more effectively.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. As currently approved, these matches occur no more frequently than every five minutes. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the quotes in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that a quote profile matches another profile, the system sends a message to the market participant (via the Nasdaq SelectNet system) seeking to trade at the market participant's quoted price or better and at round lot sizes, up to the amount quoted by that market participant.

The Commission approved the Nasdaq Application on a pilot basis for a six-month period ending April 3, 2000.<sup>7</sup> The Commission's rationale for limiting the period was based partly on the perceived need to enhance certain aspects of clearing brokers' capabilities to monitor trading activity occurring in the Nasdaq Application. Nasdaq is in the process of adding new features to the Nasdaq Application that address all of the stated concerns regarding clearing and anonymity, and plans to file with

<sup>6</sup> Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999)(SR-NASD-98-85).

<sup>7</sup> See *supra* note 6.

the Commission a proposed change reflecting these new features. Because these new features will not be in place until the second quarter 2000 and must be subject to notice and comment before approval, the pilot will end prior to such time periods. Nasdaq believes that the Nasdaq Application provides benefits to the market and should be allowed to continue to operate as currently operating for an additional six months to permit Nasdaq to implement the system changes that address the Commission's concerns.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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 markets system, and, in general to protect investors and the public interests.

Nasdaq also believes the proposed rule change is consistent with Section 11A of the Act<sup>9</sup> in general, and Section 11A(a)(1)(A)<sup>10</sup> in particular, by promoting economically efficient execution of securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer.

### *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 purpose of the Act.

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

Nasdaq has neither solicited nor received written comments on the proposed rule change, as amended.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule

19b-4(f)(6)<sup>12</sup> thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposed simply extends a previously approved pilot program for an additional six months. By extending the pilot program, the Commission will enable Nasdaq to continue to offer this additional trading mechanism without interruption. In addition, the Commission finds that Nasdaq provided the required pre-filing written notice of its intent to file this proposed rule change when it filed the original proposed rule change.<sup>13</sup>

## 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 submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 the File No. SR-NASD-00-14 and should be submitted by May 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42607; File No. SR-NASD-00-05]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Release of Disciplinary Information**

April 3, 2000

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 February 16, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice of the proposed rule change to solicit comments on the proposal from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to amend IM-8310-2 of the Association, to provide for the publication of all final, litigated decisions issued by the Office of Hearing Officers ("OHO"),<sup>3</sup> the National Adjudicatory Council ("NAC"), and the NASD Board, regardless of sanctions imposed. Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

#### IM-8310-2. Release of Disciplinary Information

(a) through (c) No change.  
(d)(1) The Association shall release to the public information with respect to

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The OHO issues decisions rendered by Hearing Officers (default decisions) and Hearing Panels.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).