For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45496; File No. SR–NASD–2002–31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend a Pilot That Permits SuperSOES To Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

March 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), acting through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) [1] of the Act, and Rule 19b–4(f)(6) thereunder,[2] which renders the proposal effective on filing with the Commission.[3] 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

There is no new language. The pilot rule language is as follows:

4710. Participant Obligations in NNMS

(a)–(e) No Change.

(f) UTP Exchanges.

(i) A UTP Exchange may voluntarily participate in the NNMS System according to the approved rules for the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges.

(ii) If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

(iii) For purposes of this rule the term ''UTP Exchange'' shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'').

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

In its filing with the Commission, the NASD 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 filing to extend until May 31, 2002, a pilot pertaining to a change to NASD Rule 4710 which specifies that if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes.[4]

The pilot is consistent with Nasdaq's long-standing goal to improve the quality of its market. Establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in that respect. Nasdaq's successful implementation of SuperSOES has significantly improved The Nasdaq Stock Market. In particular, our initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, neither SuperSOES nor the pilot has had a significant negative impact on spreads, depth or volatility. The ease with which the market reopened on September 17, 2001, appears to be directly connected to the efficiency of SuperSOES. In addition, the Chicago Stock Exchange (''CHX'') and the Boston Stock Exchange, which currently represent the vast majority of the trading volume in Nasdaq-listed stocks by UTP Exchanges, have adopted SuperSOES.[5]

While SuperSOES is improving the operation of The Nasdaq Stock Market, we have identified an area of concern that we believe must be addressed immediately to ensure the smooth functioning of the Nasdaq system.[6] Specifically, if a UTP Exchange chooses to access Nasdaq but does not accept automatic executions through SuperSOES, there is a potential for queuing in the system that could disrupt and slow the market, when that exchange is alone at the best quote in The Nasdaq Stock Market. To improve the trading environment for all of Nasdaq's valued market participants, and to avoid potential significant market disruptions, we are proposing to modify SuperSOES to remove non-automatic execution UTP Exchanges from the SuperSOES execution and order processing function.

Background

On January 14, 2000, the Commission approved a rule change to establish the NNMS and to modify Nasdaq's SelectNet Service with respect to Nasdaq National Market Securities (''NMS'').[7] On July 30, 2001, NNMS and the changes to SelectNet were implemented for all NMS issues. As approved and implemented, Nasdaq market participants can use two systems to trade NMS issues: A reconfigured Small Order Execution System (''SOES'')—the NNMS—and a reconfigured SelectNet system. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares.[8] By removing the size and capacity restrictions from

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(3)(A).

[2] 17 CFR 240.19b–4(f)(6).

[3] Nasdaq asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[4] The temporary approval of the pilot expired February 28, 2002. *See* Exchange Act Release No. 45047 (November 8, 2001), 66 FR 57496 (November 15, 2001).

[5] In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. *See* Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

[6] In SR–NASD–2001–69, filed October 4, 2001, Nasdaq identified and attempted to address the above concern, as well as a second concern. Specifically, permitting UTP Exchanges to participate in Nasdaq without automatic execution functionality perpetuates the potential for ''dual liability'' that Nasdaq designed SuperSOES to eliminate. The potential for dual liability exists when market participants, such as UTP Exchanges, send SelectNet liability messages to Nasdaq market makers that simultaneously receive executions through SuperSOES. Simultaneous with this filing, Nasdaq will amend SR–NASD–2001–69 to remove the material contained in this filing.

[7] *See* Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[8] SOES was limited to small agency orders for customers.

its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.[9]

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, UTP Exchanges continue to have their quotes in Nasdaq accessed through SelectNet and, as such, are not required to accept automatic executions. Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange. As a result, when a UTP Exchange is alone at the best bid/best offer for a particular security, and that UTP Exchange is only accessible through SelectNet, SuperSOES will stop processing orders in that security and will hold those orders in queue for up to 90 seconds.

This pause serves two purposes. First, it provides a Nasdaq market participant the opportunity to send a SelectNet liability message to the UTP Exchange (if that exchange has chosen to participate in SelectNet[10]), but at the risk of substantial queuing of market and marketable limit orders for that security as the Nasdaq market participant awaits a response to its order. Second, it enables a SuperSOES market participant (*i.e.*, market maker, Full Participant ECN, or participating UTP Exchange) to join the current best bid/best offer or create a new best bid/best offer.[11]

If, after 90 seconds, a SuperSOES market participant does not join the current best bid/best offer, and the UTP Exchange does not respond to its inbound SelectNet order, SuperSOES returns the orders that are in queue and the system shuts down for that security. The system will only resume once the UTP Exchange responds to orders delivered to its quote, or moves its quote away from the inside.[12] Such delays will adversely impact Nasdaq's ability to ensure the proper functioning of our market through a major Nasdaq market system, and to enable market participants to obtain executions for their customers.

SuperSOES increases the speed of executions and improves the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. While SelectNet was adequate as the primary means of UTP Exchange access in the past, this no longer is true. Market participants demand and require the ability to access liquidity at the best prices instantaneously. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to outbound Nasdaq orders, Nasdaq must be able to trade through the quotations of UTP Exchange participants that do not participate in Nasdaq via automatic execution.

Proposed Amendment

To address these problems, Nasdaq proposed, and the Commission approved, a pilot to amend NASD Rule 4710 to require that UTP Exchanges that voluntarily choose to trade Nasdaq securities through Nasdaq market systems either participate fully in the automatic executions through SuperSOES, or participate in SelectNet pursuant to existing NASD Rules and have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP Exchange elects not to participate in SuperSOES (in favor of SelectNet or the telephone), the UTP Exchange's quote will not be accessed through SuperSOES. In this case, SuperSOES will not include that UTP Exchange's quotation for order processing and execution purposes. This will prevent a UTP Exchange that is not otherwise accessible via SuperSOES from effectively shutting down the market in that security.[13]

UTP Exchanges that choose this option would be accessible by telephone as contemplated in the Nasdaq UTP Plan,[14] via SelectNet (pending approval of Nasdaq's proposal to eliminate UTP Exchange access to SelectNet), or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.[15] Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq is proposing the pilot for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically since SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of our marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

Nasdaq wants to ensure that the market in a particular security does not shut down—thereby harming investors and the market—if there is an unresponsive UTP Exchange setting the current best bid/best offer for that security. The system recognizes the

[9] As originally proposed, market participants were permitted to enter into the modified SelectNet only: (1) Those orders that specify a minimum acceptable quantity for a size that is at least 100 shares greater than the posted quote of the receiving market participant; or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

[10] The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, it relies on the language in The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (the "Nasdaq UTP Plan"), and provides only telephone access to its quotes.

[11] This pause occurs because the quotes of UTP Exchanges and Order Entry ECNs are not accessible through SuperSOES, but only through the order-delivery portion of the system.

[12] To illustrate, assume CHX does not participate in SuperSOES and is alone at the current best bid of $20 for 1000 shares of ABCD. MMA enters an order into SuperSOES, and MMB directs (or preferences) 1,000 shares via SelectNet to CHX. If no other market maker or Full Participant ECN joins the current best bid of $20, SuperSOES stops processing orders in ABCD for 90 seconds. CHX waits 2 minutes before responding to MMB's preferenced SelectNet liability order either by filling or declining the order. (This delay could occur if there are equipment problems at CHX, in Nasdaq, or both.) The result is that the market in ABCD effectively is held up for 2 minutes and SuperSOES is shut off for ABCD (after 90 seconds.)

[13] The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants "shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations." *See* Section IX, Market Access, of the Nasdaq UTP Plan.

[14] We note that this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

[15] This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of an NMS plan.

importance of maintaining price priority and ensuring that market participants receive the best possible price in the market. As such, SuperSOES was originally designed not to trade through the best quote that appears in the Nasdaq montage. However, that premise assumed all quotes would be immediately accessible.[16] SuperSOES must be able to continue operating when a particular quote is not accessible by market participants. To that end, if a UTP Exchange chooses not to participate in SuperSOES, and that UTP Exchange sets the inside bid or ask, Nasdaq will enable SuperSOES not to include that UTP Exchange's quotation for order processing and execution.

Participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it was appropriate to alter the terms under which a UTP Exchange participates in The Nasdaq Stock Market to address all of the concerns described in this proposal. For the same reasons, it is important to continue the pilot program to preserve the status quo as additional UTP Exchanges prepare to commence trading Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, in that the proposal is designed to facilitate 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. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of non-automatic execution UTP Exchanges is necessary for the fair and orderly operation of The Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible and is alone at the best bid or best offer.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The 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

Because the foregoing 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 it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6), thereunder.[18] At any time within 60 days of the filing of the proposed rule change, 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission finds good cause to waive both the 5-day pre-filing notice requirement and the 30-day operative delay, because the waivers are consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the NASD pilot to continue in operation without interruption. Nasdaq states that the pilot reduces the potential for a shut down in Nasdaq's automatic execution systems. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative date.[19]

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 File No. SR–NASD–2002–31 and should be submitted by March 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

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DEPARTMENT OF STATE

[Public Notice 3887]

United States International Telecommunication Advisory Committee, Telecommunication Standardization (ITU and CITEL) Agendas; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). These meetings will address preparations for ITU-T Study Group Meetings.

- The ITAC will meet to prepare for the June 2002 meeting of the Telecommunication Sector Advisory Group (TSAG) from 9:30 to noon on April 17, May 15, and May 29. The April 17 meeting will be held at the Alliance for Telecommunications Industry Solutions (ATIS), 1200 G Street NW., Suite 350, Washington, DC, and the May 15 meeting will be held at TIA, 1300 Pennsylvania Avenue NW., Suite 350, Washington, DC. The May 29

[16] Order Entry ECNs are not subject to inbound automatic executions in SuperSOES. However, as NASD members, Order Entry ECNs are subject to NASD Rules and the enforcement and disciplinary powers granted therein. As non-members, UTP Exchanges are not subject to the same regulatory infrastructure.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).