

officially cancel Form 1203-AW at that time.

OPM Form 1203-FX is a seven page version of the Occupational Questionnaire that allows the applicant to transmit via facsimile. This version does not contain a unique control number pre-printed within the footer of the form. However, this revised version will be phased in to allow continued acceptance of the existing version dated October 1998, making the existing version still usable. (See the comments identified below for what changes were made.)

OPM Form 1203-EZ is a three page version that is shorter and is transmittable via facsimile. This version does not contain a unique control number pre-printed within the footer of the form.

A comment request for these forms was published in the **Federal Register** on August 6, 2001 [FR Doc. 01-19551]. During the initial 60-day comment request period, OPM received no comments.

OPM has revised the Occupational Questionnaire to include the following: (1) Updated the Privacy Act and Public Burden Statements; (2) slightly re-designed the forms for scanning technology; (3) improved the sections that allow overseas applicants to enter foreign addresses and phone numbers; (4) removed the requirement for the applicant to sign and date (since this is a scan form that only recognizes certain characters written in blocks and filled-in bubbles); (5) added "Date of Birth" to all versions; (6) updated the Veterans' Preference section; and (7) changed the title of this series from "Qualifications and Availability Form" (commonly referred as the "Form C") to "Occupational Questionnaire".

Upon clearance from the Office of Management and Budget, the Occupational Questionnaire will be available via OPM's web site and OPM's USAJOBS web site. The form will be made available electronically as a fillable Adobe Acrobat Reader (.PDF) file and fillable on-line when applying on OPM's USAJOBS web site (when applicable). A transmittal memo from OPM will be sent to all Federal agency personnel directors via the Human Resources Management Council, announcing the approved, revised form and where/how to obtain it.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202-606-8358, fax at 202-418-3251, or e-mail at [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received on or before July 15, 2002.

**ADDRESSES:** Send or deliver comments to—

U.S. Office of Personnel Management, Employment Service, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415-9820, E-mail: [ratimmin@opm.gov](mailto:ratimmin@opm.gov), and Office of Management & Budget, Office of Information & Regulatory Affairs, ATTN: Joseph Lackey, OPM Desk Officer, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

**Kay Coles James,**  
Director.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46056; File No. SR-NASD-2002-59]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a New Trade Report Modifier to be Attached to Trades Whose Prices Exceed Certain Parameters

June 10, 2002.

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 April 29, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. 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 create a new trade report modifier to be attached to trades whose prices exceed certain parameters. Under the proposed rule change, members would not have the ability to append this modifier to trade reports. Nasdaq proposes that only Nasdaq staff and Nasdaq systems would append this modifier, and only for transactions in Nasdaq National Market

System, SmallCap Market, and OTC Bulletin Board securities.

#### 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

Trades reported to Nasdaq using the Automated Confirmation Transaction ("ACT") Service are subject to procedures that identify trades executed at prices away from the current market. This process helps to ensure a fair and orderly market by preventing such trades from being disseminated to the public as last sale reports and/or by detecting trades that are reported at erroneous prices.

The process differs slightly depending on whether a trade is executed using a Nasdaq system, which then automatically reports the trade to ACT (e.g., SelectNet), or the trade is submitted to ACT directly by a member. ACT rejects a trade that is submitted directly by a member if the price reported is outside established parameters. The member has an opportunity to resubmit the trade, which then will be subject to a different set of parameters. If the price is rejected after this second process, the member must call Nasdaq's MarketWatch Department to explain why the execution price was so far away from the current market. If the MarketWatch staff determines, on the basis of its conversation with the member, that there is an adequate rationale for such price, the staff would submit the trade to ACT.<sup>3</sup> In such circumstances, the trade is normally being reported more than 90 seconds after the trade was

<sup>3</sup> If the MarketWatch staff believes the price would be misleading to the market, the trade report would be submitted for clearing purposes only. Nasdaq believes that the number of instances in which the staff submits the report only for clearing purposes is very limited. The staff estimates that this occurs less than 10 times a year. In addition, the staff can refer the transaction to NASD Regulation for further investigation.

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

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

executed, and so the MarketWatch staff would report the trade with the .SLD modifier attached, which indicates a late trade report.<sup>4</sup> Trades reported with a .SLD modifier are not included in the last sale calculation, but are included in the calculation of the high and low price for the security.

Trades executed using Nasdaq systems, however, are subject to a different process due to the manner in which such trades are transmitted to ACT. The information passed to ACT from a Nasdaq system does not include the exact location, or terminal, within a member from which an order/execution emanates. Therefore, such trades are not subject to the second validation process which allows members to resubmit a trade report after it is rejected initially, since the exact location within a member to which a reject message can be sent is unknown. To compensate for this difference and to prevent such trades from being included in the last sale calculation, Nasdaq automatically attaches the .SLD modifier to any trades executed using a Nasdaq system whose prices exceed the initial parameters. Nasdaq also includes another modifier with these trade reports to indicate that the .SLD modifier has been attached by a Nasdaq system. This other modifier ensures that members would not be cited for late trade reporting on the basis of these trades.

Nasdaq believes that the process described above has worked well in promoting a fair and orderly market because it has prevented certain anomalous prices from being included in the last sale calculation, which is used for many purposes including as a measure of the current market for a security; a determinant of the execution price of certain types of orders (*e.g.*, market on close orders); and in determining index values. Nasdaq believes this process has helped provide more accurate information about the prices at which individual securities are trading, and for that matter, the market, or a segment of the market, if such securities are components of indices designed to measure the entire market or a particular segment.

However, Nasdaq has identified a means of further improving the current process. The .SLD modifier prevents a trade report from being included in the last sale calculation, but it does not prevent such a report from being included in the calculation of the high and low price of a security. As such, a

trade that has been excluded from the last sale calculation because its price exceeds the parameters, nevertheless, may set the high or low price for a security. Nasdaq believes that these trades should not establish the high or low price for a security because the high and low prices are also used as a measure of a security's performance, or could trigger certain actions.

Therefore, Nasdaq is proposing to create a new modifier that would exclude such trades from the high/low calculations, as well as the last sale calculation.<sup>5</sup> This new modifier tentatively would be known as the "Out of Range," or .OR, modifier and would be used instead of the .SLD modifier in the circumstances described above.<sup>6</sup> For example, if a trade executed using SelectNet exceeds the price parameters, ACT automatically would append the .OR modifier to the trade report instead of the .SLD modifier. Similarly, the Nasdaq MarketWatch staff would append the .OR modifier to reports they submit. Nasdaq believes that the number of trade reports that contain the .SLD modifier either attached by ACT or the Nasdaq MarketWatch staff because the price is outside the parameters is very small.<sup>7</sup> Nasdaq believes that the current proposal to create a new modifier would not affect this number since all that is being changed is the modifier that is being attached, and Nasdaq is not proposing to modify the price parameters.

Nasdaq recognizes that, in certain circumstances, members may believe that they have executed a trade at a price that provides valuable information to the market, even though the price is outside the parameters. To ensure that such trades are not inappropriately withheld from the last sale and high/low calculations, members would be able to contact the Nasdaq MarketWatch staff to request that the .OR modifier be removed from the trade report. The member must explain the facts and circumstances surrounding the trade and why the price was reasonable, as measured against the market at the time

<sup>5</sup> Nasdaq recognizes that trades whose prices exceed the price parameters nevertheless may be valid transactions that the parties want to settle. As such, these trades are transmitted to The Depository Trust and Clearing Corporation for clearing and settlement.

<sup>6</sup> As discussed earlier, members will not have the ability to append the .OR modifier to trade reports. Only Nasdaq staff and Nasdaq systems will append this modifier, and only for transactions in Nasdaq National Market System, SmallCap Market, and OTC Bulletin Board securities.

<sup>7</sup> Nasdaq estimates that, on a daily average, less than .002% of trades executed on Nasdaq are reported with the .SLD modifier due to the trade being executed at a price that exceeds the price parameters.

of execution. If the MarketWatch staff agrees with the explanation, it can remove the .OR modifier from the trade report.

The process for developing and implementing the modifier, which will include testing with market data vendors, will take several months. Nasdaq will continue to utilize the .SLD modifier in the manner described until the new modifier can be implemented.

## 2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(2) of the Act<sup>8</sup> in that the proposal is designed for the NASD to be organized and have the capacity to carry out the purposes of the Act. Nasdaq also believes the proposal is consistent with section 15A(b)(6) of the Act<sup>9</sup> in that it is designed to protect investors and the public interest. In addition, Nasdaq believes that its proposal is consistent with the NASD's obligations under these provisions of the Act because it will result in the public dissemination of information that more accurately reflects the current trading in a particular security. Furthermore, Nasdaq believes that, to the extent a security is a component of an index, the index will more accurately reflect the value of the market, or segment of the market, that the index is designed to measure. Nasdaq believes that the corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

Nasdaq also believes the proposal is consistent with the NASD's obligations under its transaction reporting plan for Nasdaq National Market System securities approved by the Commission.<sup>10</sup> In this plan, the NASD committed to validate prices for reasonableness as measured against previous trades in a security.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78o-3(b)(2).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617 (March 31, 1982).

<sup>4</sup> NASD rules require that trades be marked late, using the .SLD modifier, if they are reported more than 90 seconds after execution. *See e.g.*, NASD Rule 4632.

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

No written comments were solicited or received with respect to the proposed rule change.

**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 Nasdaq 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 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 File No. SR-NASD-2002-59 and should be submitted by July 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-15076 Filed 6-13-02; 8:45 am]

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**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

[Docket No. WTO/DS-245]

**WTO Dispute Settlement Proceeding Regarding Japanese Measures Affecting the Importation of Apples**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on June 3, 2002, at the request of the United States, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) established a dispute settlement panel under the Marrakesh Agreement Establishing the WTO to examine measures imposed by Japan restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. The United States alleges that these measures are inconsistent with the obligations of Japan under the General Agreement on Tariffs and Trade 1994, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Agriculture. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30, 2002, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically to [japanapples@ustr.gov](mailto:japanapples@ustr.gov) or (ii) by mail to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Attn: Japan—Measures Affecting the Importation of Apples, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508, with a confirmation copy sent electronically or by fax to (202) 395-3640.

**FOR FURTHER INFORMATION CONTACT:** Juan A. Millán, Assistant General Counsel, Office of the United States Trade Representatives, 600 17th Street, NW., Washington, DC, (202) 395-3581.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel.

USTR is providing notice that on June 3, 2002, at the request of the United States, a WTO dispute settlement panel was established to examine measures imposed by Japan restricting the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. The panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the United States**

The United States has requested WTO consultations with Japan regarding its restrictions on the importation of U.S. apples in connection with fire blight or the fire blight disease-causing organism, *Erwinia amylovora*. These restrictions include, *inter alia*, the prohibition of imported apples from U.S. states other than Washington or Oregon; the prohibition of imported apples from orchards in which any fire blight is detected; the prohibition of imported apples from any orchard (whether or not it is free of fire blight) should fire blight be detected within a 500 meter buffer zone surrounding such orchard; the requirement that export orchards be inspected three times yearly (at blossom, fruitlet, and harvest stages) for the presence of fire blight for purposes of applying the above-mentioned prohibitions; a post-harvest surface treatment of exported apples with chlorine; production requirements, such as chlorine treatment of containers for harvesting and chlorine treatment of the packing line; and the post-harvest separation of apples for export to Japan from those apples destined for other destinations.

The United States contends that Japan's measures are inconsistent with the obligations of Japan under Article XI of the General Agreement on Tariffs and Trade 1994, Article 4.2 of the Agreement on Agriculture, and Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.5, 5.6, 6.1, 6.2, and 7 and paragraphs 5, 6, and 8 of Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures. Japan's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English.

<sup>11</sup> 17 CFR 200.30-3(a)(12).