

provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the proposal would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions. The Commission believes that this should help to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, and do not simply stand there for the purpose of accepting RAES trades.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2002-49), is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47308; File No. SR-NASD-2003-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent Nasdaq's Pilot Program That Makes Available Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

February 4, 2003.

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 January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-

4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 proposes to make permanent its pilot program that makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. The text of the proposed rule change is available at Nasdaq and at the Commission.

#### 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. The Association 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

In October 1999, the Commission approved a pilot program ("Program") that made available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.<sup>6</sup> Under the original Program, Nasdaq provided, until 6:30 p.m., the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS").

In August 2002, Nasdaq modified the terminology applicable to the Program to reflect the pending introduction of Nasdaq's SuperMontage system.<sup>7</sup> Since its original approval, the Program has been extended numerous times and has operated continuously.<sup>8</sup> Nasdaq now

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

<sup>5</sup> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR-NASD-99-57).

<sup>7</sup> See Securities Exchange Act Release No. 46398 (August 22, 2002), 67 FR 55290 (August 28, 2002)(SR-NASD-2002-114).

<sup>8</sup> See Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20,

proposes to make the Program permanent.

Nasdaq proposes no substantive or technical changes to the pilot program. Nasdaq's permanent after-hours program will operate in the same manner as the current Program. Like the pilot, the posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 p.m. Eastern Time will be entirely voluntary. Quotes entered after-hours will continue to be disseminated by Nasdaq via NQDS,<sup>9</sup> and Nasdaq's ACT system will continue to accept trade reports up to 6:30 p.m. Eastern Time. Nasdaq will also continue to disseminate transaction reports to the public via the SIP. The after-hours session will continue to operate under the following general terms and conditions as set forth in the Commission's original approval order of the pilot:

- Any Nasdaq market maker that wishes to post quotations and trade during the 4 p.m. to 6:30 p.m. time period shall be obligated to post firm two-sided quotations when opening and making its market but may thereafter enter or leave the market on the hour or half-hour up to 6:30 p.m.

- NASD member firms that do not wish to open their market and instead simply send customer or proprietary orders to other market participants for display and/or execution will likewise not be obligated to post firm two-sided quotes.<sup>10</sup>

- Regardless of an NASD member's quotation activity, all transactions in Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities executed between the hours of 9:30 a.m. and 6:30 p.m. Eastern Time must be reported to Act within 90 seconds.

- NASD members who participate in the after-hours session must operate in conformity with all NASD Rules except those that are limited by their express

1999)(SR-NASD-99-57); 42481 (March 1, 2000), 65 FR 12310 (March 8, 2000)(SR-NASD-2000-07); 43302 (September 19, 2000), 65 FR 57852 (September 26, 2002)(SR-NASD-2002-56); 43953 (February 12, 2001), 66 FR 10927 (February 22, 2001)(SR-NASD-2001-12); 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR-NASD-2002-29). The pilot is currently scheduled to terminate on January 31, 2003. See Securities Exchange Act Release No. 46532 (September 23, 2002), 67 FR 61367 (September 30, 2002)(SR-NASD-2002-118).

<sup>9</sup> The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor ("SIP") for full public dissemination.

<sup>10</sup> NASD market makers that do not elect to open their quotes would still be obligated to trade report transactions during the 4:00 p.m. to 6:30 p.m. time period consistent with current trade reporting rules.

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

<sup>9</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> 15 U.S.C. 78s(b)(3)(A).

terms, or by an official interpretation of the NASD, to a specific time period outside of the 4 p.m. to 6:30 p.m. time period. This obligation applies with particular force to the requirement to protect customer limit orders set forth in NASD IM-2110-2.

- The NASD's Short Sale Rule (NASD Rule 3350) will not apply during the after-hours session.

Nasdaq staff will continue to initiate trading halts,<sup>11</sup> and adjudicate clearly erroneous trade disputes in the after-hours session, using the same standards and methods as employed during traditional market hours.<sup>12</sup>

Nasdaq believes the transparency and investor protection benefits resulting from the availability of Nasdaq's systems and facilities after the traditional trading day have proven their worth and should now become permanent.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>13</sup> in general, and with Section 15A(b)(6) of the Act,<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *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.

<sup>11</sup> Nasdaq notes that this trading halt authority will be limited to individual stocks only and will be undertaken in consultation with other markets operating after 4:00 p.m. Eastern Time. Market-wide trading halt rules currently in effect rely solely on percentage-based declines in the Dow Jones Industrial Average ("DJIA"), which is not calculated after the 4:00 p.m. close. In the event that a circuit breaker halt, triggered during regular market hours, prevents a normal close of U.S. primary markets, there will be no after-hours trading session that day.

<sup>12</sup> As during the pilot period, NASD Regulation, Inc. ("NASD Regulation") is of the view that nothing in the instant proposal modifies or limits an NASD member's obligation to comply with the rules of NASD Regulation's Order Audit Trail System ("OATS") when reporting trading activity taking place between 4:00 p.m. and 6:30 p.m. Eastern Time.

<sup>13</sup> 15 U.S.C. 78o-3.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

### *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<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours trading program to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>17</sup>

### **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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 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).

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-2003-14 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

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

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## **Securities and Exchange Commission**

[Release No. 34-47307; File No. SR-NASD-2002-134]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Exemptions from Options Position and Exercise Limits**

February 3, 2003.

#### **I. Introduction**

On October 1, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 to amend NASD rule 2860(b)(3)(A) by eliminating options position and exercise limits for positions entered into under certain enumerated hedge strategies and establishing position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract. On December 23, 2002, the NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed

<sup>18</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> See letter from Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the