

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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-071 and should be submitted on or before July 8, 2004.

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

Margaret H. McFarland, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49844; File No. SR-NASD-2004-021]

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

June 10, 2004.

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 4, 2004, the National Association of Securities Dealers, Inc. ("NASD"), 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. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.<sup>3</sup> 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 the Substance of the Proposed Rule Change Regarding Reporting of Cancelled Trades

Nasdaq proposes to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. The text of the proposed rule change is below. Proposed new language is italicized.<sup>4</sup>

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

\* \* \* \* \*

(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member

responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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4640. Reporting Transactions in Nasdaq SmallCapSM Market Securities

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4642. Transaction Reporting

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(g) Reporting Cancelled Trades (1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by

<sup>11</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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Commission, dated May 18, 2004 ("Amendment No. 1"). Amendment No. 1 replaced Nasdaq's February 4, 2004 filing in its entirety. Amendment No. 1 is incorporated into this notice.

<sup>4</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at www.nasd.com, and also reflects a proposal to rename the Automated Confirmation Transaction Service to the Nasdaq Market Center as contained in proposed rule change filing SR-NASD-2004-076.

the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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4650. Reporting Transactions in Nasdaq Convertible Debt Securities

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4652. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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6100. Trade Reporting Service

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6130. Trade Report Input

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(f) Reporting Cancelled Trades  
(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rules 5430, 6420, or 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430, 6420, or 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

Members shall comply with deadlines established in Rules 4632, 4642, 4652, 6420, and 6620 for reporting cancelled trades.

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6420. Transaction Reporting

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(f) Reporting Cancelled Trades  
(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that

would have been required by Rule 6420 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER EQUITY SECURITIES

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6620. Transaction Reporting

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(f) Reporting Cancelled Trades (1) Obligation and Party Responsible for Reporting Cancelled Trade

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the decision to cancel the trade.

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and for which the decision to cancel occurs after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which a decision to cancel is made prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and for which the decision to cancel occurs after 6:30 p.m. on the date of execution, the member responsible

under paragraph (f)(1) shall report the cancellation on the following day by 6:30 p.m.

(F) For any trade for which the decision to cancel occurs on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) if the decision to cancel occurs before 6:30 p.m., then by 6:30 p.m. on the date when the decision to cancel occurs, or (ii) if the decision to cancel occurs at or after 6:30 p.m., then by 6:30 p.m. on the following day.

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

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

1. Purpose

Market participants make trading and investment decisions based in part on information disseminated by Nasdaq about trades executed in its market. To improve the quality of this information, Nasdaq is proposing to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center.

Specifically, Nasdaq is proposing to require members to notify Nasdaq, through a submission, when they cancel a trade previously reported to Nasdaq.<sup>5</sup> The member that originally had the obligation to report the trade also will have the responsibility to report the cancellation of the trade.<sup>6</sup> Nasdaq proposes to set different deadlines—5:15 p.m. same day, 6:30 p.m. same day, or 6:30 p.m. of the next trading day—depending on when the original trade is executed and when the decision to cancel occurs. The 5:15 p.m. deadline corresponds to the final dissemination of market pricing information for trades executed during normal market hours (9:30 a.m.—4 p.m.), such as high/low/last sale and Nasdaq Official Closing Price (“NOCP”) values. The 6:30 p.m.

<sup>5</sup> Members will not be required to submit a cancellation report if Nasdaq cancels a trade using its authority under NASD Rule 11890. In such situations, Nasdaq submits the cancellation report.

<sup>6</sup> For cancelled trades executed through the Nasdaq Market Center execution service, which automatically submits trade reports, the member that would have been responsible for submitting the original report (but for the system reporting the trade) will be responsible for initiating the cancellation. For example, when trade executed between two market makers in the Nasdaq Market Center execution service is subsequently cancelled, the sell side member is responsible for initiating the cancellation.

deadline corresponds to the final dissemination of volume totals, and the close of the Nasdaq Securities Information Processor and the Nasdaq trade reporting system.

There are four possible scenarios. First, for a trade executed during normal market hours that is reported as cancelled prior to 5:15 p.m. on the same day the trade occurred, the cancellation could impact high/low/last sale values and possibly NOCP values. So that Nasdaq can quickly and accurately reflect the cancellation, Nasdaq proposes a 90 second reporting obligation (with best efforts to report cancellations that occur after 5:13:30 p.m. and before 5:15 p.m.).

Second, for a trade executed during normal market hours that is cancelled after 5:15 p.m. on the same day the trade occurred, the cancellation is to be reported by 6:30 p.m. on the following trading day. The trading community and investing public require finalized pricing information (*i.e.*, high/low/last and closing prices) at a time reasonably related to the 4 p.m. close of regular market-hours trading. Allowing a firm to submit a cancelled report of a market hours trade after 5:15 p.m. on trade date would require Nasdaq to adjust its prices up until this new time, a departure from long-standing industry practices and inconsistent with the 5:15 p.m. deadline for reporting a market-hours trade.<sup>7</sup> Next day reporting of the cancellation adequately corrects the regulatory audit trail, but does not impact the previous day's reported price information.

Third, for a trade executed outside of normal market hours that is cancelled prior to 6:30 p.m. on the day of the trade, the cancellation is to be reported prior to the close of Nasdaq's reporting system at 6:30 p.m. The 6:30 p.m. time is consistent with the report time for trades executed outside of normal market hours. Trades that occur outside of normal market hours (*i.e.*, .T trades) do not impact high/low/last sale or NOCP values, but do impact volume. If, however, the trade is cancelled after 6:30 p.m. on the day of the trade, the cancellation is to be reported by 6:30 p.m. on the next following day.

Fourth, for any trade, whether a normal market hours trade or a .T trade, cancelled after 6:30 p.m. or on a day subsequent to the day the trade occurred, there is no impact to high/low/last sale, NOCP values or volume. Since the only correction made is to the

audit trail, these cancellations are to be reported either by 6:30 p.m. on the day in which the decision to cancel is made, provided the decision to cancel occurs before 6:30 p.m., or the next following day if the decision occurs after 6:30 p.m. Nasdaq will issue additional guidance informing members of any technical requirements for reporting the cancellation of a trade, as appropriate.

This reporting requirement will improve the accuracy of the information disseminated by Nasdaq. Today, members are not required to notify Nasdaq when the parties agree to cancel a trade. The lack of a reporting obligation creates a problem when the original trade, now cancelled, has already been reported to Nasdaq, included in the high and low price calculations for the security, and disseminated to market participants. During its routine surveillance, Nasdaq has found that in some situations cancelled trades have set a new high or low price for a security; Nasdaq believes a cancelled trade should not set these values. When Nasdaq discovers this situation, it removes the cancelled trade from the high and low price calculations and corrects its audit trail. However, Nasdaq cannot take these remedial measures if it does not know that a trade has been cancelled. Nasdaq's proposal will provide it the requisite notice so that it can take any actions necessary to correct the information disseminated and to correct its audit trail.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(6) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

### *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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-021 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

<sup>7</sup> The deadline for the cancellation of these trades to affect volume is set at 5:15 p.m. to remain consistent with the 5:15 p.m. deadline for dissemination of high/low/last and NOCP that also applies to these trades.

<sup>8</sup> 15 U.S.C. 78o-3.

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

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-021 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49849; File No. SR-NYSE-2004-22]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Equity Gold Shares

June 10, 2004.

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 June 7, 2004, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 the NYSE.

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

The NYSE proposes to list and trade Equity Gold Shares ("Shares"), which represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust<sup>SM</sup> ("Trust").

#### 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 NYSE 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, and the Exchange has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

NYSE Constitution and Rules

#### Rule 1300

##### Equity Gold Shares

(a) *The provisions of this Rule 1300 series apply only to Equity Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust.<sup>SM</sup> While Equity Gold Shares are not technically Investment Company Units and thus are not covered by Rule 1100, all other rules that reference "Investment Company Units," as defined and used in Para. 703.16 of the Listed Company Manual, including, but not limited to Rules 13, 36.30, 98, 104, 460.10, 1002, and 1005 shall also apply to Equity Gold Shares.*

(b) *As is the case with Investment Company Units, paragraph (m) of the Guidelines to Rule 105 shall also apply to Equity Gold Shares. Specifically, Rule 105(m) shall be deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in physical gold, gold futures or options on gold futures, or any other gold derivatives. However, an approved person of an equity specialist entitled to an exemption from Rule 105(m) under Rule 98 may act in a market making capacity, other than as a specialist in the Equity Gold Shares on another market center, in physical gold, gold futures or options on gold futures, or any other gold derivatives.*

(c) *Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the Constitution, all other Exchange Rules and policies shall be applicable to the trading of Equity Gold*

*Shares on the Exchange. Pursuant to Exchange Rule 3 ("Security"), Equity Gold Shares are included within the definition of "security" or "securities" as those terms are used in the Constitution and Rules of the Exchange.*

#### Rule 1301

##### Equity Gold Shares: Securities Accounts and Orders of Specialists

(a) *The member organization acting as specialist in Equity Gold Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange. (See Rules 104.12 and 104.13.) In addition, the member organization acting as specialist in Equity Gold Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading physical gold, gold futures or options on gold futures, or any other gold derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Equity Gold Shares shall trade in physical gold, gold futures or options on gold futures, or any other gold derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required hereby.*

(b) *In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11)), the member organization acting as specialist in Equity Gold Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, allied member, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in physical gold, gold futures or options on gold futures, or any other gold derivatives, as may be requested by the Exchange.*

(c) *In connection with trading physical gold, gold futures or options on gold futures or any other gold derivative (including Equity Gold Shares), the specialist registered as such in Equity Gold Shares shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options on*

<sup>10</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.