

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 7, 2005:

A closed meeting will be held on Wednesday, March 9, 2005, at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, March 9, 2005, will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 2, 2005.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-4393 Filed 3-2-05; 4:21 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of CMKM Diamonds, Inc., a/k/a Casavant Mining Kimberlite International, Inc.; Order of Suspension of Trading

March 3, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CMKM

Diamonds, Inc. ("CMKM Diamonds") (Pink Sheets symbol "CMKX"), a Nevada corporation also known as Casavant Mining Kimberlite International, Inc. Questions have been raised about the adequacy of publicly available information concerning, among other things, CMKM Diamonds' assets and liabilities, mining and other business activities, share structure and stock issuances, and corporate management. Since the fiscal year ending December 31, 2002, CMKM Diamonds has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934. The Commission is concerned that CMKM Diamonds may have unjustifiably relied on a Form S-8 to issue unrestricted securities. The Commission is also concerned that CMKM Diamonds and/or certain of its shareholders may have unjustifiably relied on Rule 144(k) of the Securities Act of 1933 ("Securities Act") in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Rules 144 and 145 of the Securities Act.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. E.S.T., March 3, 2005, through 11:59 p.m. E.S.T., on March 16, 2005.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-4446 Filed 3-3-05; 11:54 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51278; File No. SR-NASD-2005-027]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Members' Obligations To Report Cancelled Trades

February 28, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

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

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

notice is hereby given that on February 14, 2005, 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. 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 the Substance of the Proposed Rule Change Regarding Reporting of Cancelled Trades

Nasdaq proposes to clarify members' obligations to report the cancellation of trades previously submitted to the Nasdaq Market Center. Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, Nasdaq has designated this proposal as effecting a change that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition.

Nasdaq is proposing to make the change operative 60 days after the date of filing. Nasdaq has provided the Commission the pre-filing notification as required by subparagraph (iii) of Rule 19b-4(f)(6).

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.<sup>5</sup>

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#### 4630. Reporting Transactions in Nasdaq National Market Securities

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#### 4632. 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

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

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

<sup>5</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at <http://www.nasd.com>.

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 *cancelled* [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 *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business day* by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business 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 *cancelled* [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 *cancelled* [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 *business day* by 6:30 p.m.

(F) For any trade *cancelled* [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 of *cancellation if the trade is cancelled before 6:30 p.m.* [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 *business*

*day if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term “*cancelled*” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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**4640. Reporting Transactions in Nasdaq SmallCap<sup>SM</sup> 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 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 *cancelled* [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 *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business day* by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business 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 *cancelled* [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 *cancelled* [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 *business day* by 6:30 p.m.

(F) For any trade *cancelled* [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 of *cancellation if the trade is cancelled before 6:30 p.m.* [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 *business day if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term “*cancelled*” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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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 *cancelled* [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 *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business day* by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business 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 *cancelled* [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 *cancelled* [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 *business day* by 6:30 p.m.

(F) For any trade *cancelled* [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 of *cancellation if the trade is cancelled before 6:30 p.m.* [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 *business day if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term "*cancelled*" shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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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 *cancelled* [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 *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business day* by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business 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 *cancelled* [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 *cancelled* [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 *business day* by 6:30 p.m.

(F) For any trade *cancelled* [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 of *cancellation if the trade is cancelled before 6:30 p.m.* [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 *business day if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (f) of this rule the term "*cancelled*" shall mean the time at which (i) the member with the reporting responsibility informs its contra party,

or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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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 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 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 *cancelled* [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 *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business day* by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [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 *business 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 *cancelled* [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 *cancelled* [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 *business day* by 6:30 p.m.

(F) For any trade cancelled [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 of cancellation if the trade is cancelled before 6:30 p.m. [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 business day if the trade is cancelled at or after 6:30 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (f) of this rule the term "*cancelled*" shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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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

On July 22, 2004, the Commission approved a proposed rule change

requiring members to report to Nasdaq the cancellation of any trade previously reported to Nasdaq, unless the trade is cancelled by Nasdaq staff.<sup>6</sup> Soon after Commission approval, questions were raised about the meaning of certain text in the new rules. Specifically, the rule requires trades executed and cancelled during normal market hours to be reported within 90 seconds of "the decision to cancel the trade." Trades cancelled outside normal market hours also must be reported by certain specified times. Because the phrase "the decision to cancel the trade" is susceptible to multiple legitimate interpretations, thus making it difficult to impose a uniform standard against which compliance with the rule can be judged, Nasdaq is proposing new language to clarify the events that trigger the reporting obligation. The events are as follows: (1) When the member with the reporting obligation informs its contra party, or is informed by its contra party, that a trade is being cancelled, (2) when the member and its contra party agree to cancel a trade if neither party has the ability to unilaterally cancel it, or (3) the member takes an action to cancel the trade on its books and records. The new language also makes it clear that the earliest occurrence of any one of three specified events triggers the reporting obligation. For example, if a member and its contra party decide at 11 a.m. that a trade executed that same day (after 9:30 a.m.) should be cancelled, the member with the reporting obligation must report the cancellation to Nasdaq by 11:01:30 a.m., even if the member does not take action to remove the trade from its books and records until some time later that day. Requiring the trigger to be the earliest of the three events is designed to ensure the reporting of the cancellation as soon as possible.<sup>7</sup>

#### 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

<sup>6</sup> See Securities Exchange Act Release No. 50059 (July 22, 2004), 69 FR 45103 (July 28, 2004).

<sup>7</sup> The original proposed rule change and this current filing only establish an obligation to report cancellations and do not establish rules governing the circumstance in which it is permissible to cancel trades.

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

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

information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The proposed rule change will establish clear standards for determining when the obligation to report a cancelled trade is triggered, and thus it assists members in complying with the reporting obligation. The clear standards also will make it easier for the NASD to audit for compliance with the rule.

#### *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**

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,<sup>10</sup> or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

At any time within 60 days of the filing of such 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.<sup>13</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2005-027 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-2005-027. 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 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 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-2005-027 and should be submitted on or before March 28, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-4293 Filed 3-4-05; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51276; File No. SR-NYSE-2004-59]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Adopt New Rule 401A ("Customer Complaints"), and an Amendment to Rule 476A ("Imposition of Fines for Minor Violations of Rules"), Adding Rule 401A to the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A**

February 28, 2005.

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 October 21, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), 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 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**

Proposed new Exchange Rule 401A ("Customer Complaints") would require members and member organizations (the "Membership" or "Member Firms") to send acknowledgement of any customer complaint subject to the reporting requirements of Rule 351(d) within 15 business days of receiving such complaint, and to respond to the issues raised in such complaint within a reasonable period of time. The proposed corresponding amendment to Rule 476A ("Imposition of Fines for Minor Violations of Rules") would allow the Exchange to sanction the Membership's less serious violations of the acknowledgement provisions of proposed new Rule 401A pursuant to the minor fine provisions of Rule 476A. Below is the text of the proposed rule change. Proposed new language is *italicized*.

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#### *Rule 401A*

##### *Customer Complaints*

*(a) For every customer complaint they receive that is subject to the reporting requirements of Rule 351(d), members and member organizations must:*

<sup>10</sup> Nasdaq has provided the Commission the pre-filing notification as required by subparagraph (iii) of Rule 19b-4(f)(6), and intends to make the change operative 60 days after the date of filing.

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

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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

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

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

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