

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51854; File No. SR-NASD-2005-065]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Nasdaq Market Center Rules for Trade Reporting of Exchange-Listed Securities

June 15, 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 May 20, 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. Nasdaq has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 filing a proposed rule change to modify NASD Rule 6420(a)(3)(A) to open the Nasdaq Market Center for exchange-listed securities trade reporting at 8 a.m. (eastern time). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].<sup>5</sup>

\* \* \* \* \*

#### 6420. Transaction Reporting

(a) When and How Transactions are Reported.

(1) No Change.

(2) No Change.

(3)(A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:

[(i) by transmitting the individual trade reports to the Nasdaq Market

Center on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time;

(ii) by designating the entries "as/of" trades to denote their execution on a prior day; and ]

(i) *Last sale reports of transactions in eligible securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall also be designated as .T trades. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades.*

(ii) *Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8 a.m. and 9:30 a.m. Eastern Time on trade date as ".T" trades. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades.*

(iii) *Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time and be designated "as/of" trades.*

[(iii)iv] [by including the time of execution.] The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively by paragraphs (b), (c), and (d) below.

(B) No Change.

(4)-(10) No Change.

(b)-(f) No Change.

\* \* \* \* \*

#### 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

Nasdaq is proposing to modify NASD Rule 6420(a)(3) which governs reporting of transactions in exchange-listed securities that occur outside the hours

of 9:30 a.m. and 6:30 p.m. Eastern Standard Time. Rule 6420(a)(3) currently provides that such trades shall be reported the next business day (T+1) on an "as/of" basis between the hours of 8 a.m. and 6:30 p.m. This delayed trade reporting deprives investors of relevant market information that is useful in making informed investment decisions.

Nasdaq is proposing that:

(1) Trades executed between 8 a.m. and 9:30 a.m. be reported within 90 seconds of execution;

(2) trades executed between midnight and 8 a.m. be reported that trade day between 8 a.m. and 9:30 a.m.; and

(3) trades executed between 6:30 p.m. and midnight be reported the next trade day (T+1) between 8 a.m. and 6:30 p.m. on an "as/of" basis.

This proposal would be beneficial to investors and market participants alike for several reasons. First, requiring that the trades be reported closer to the time of execution and that they be reported along with the time of execution would further the goals of the Act. Specifically, the current proposal would improve transparency by reporting trades executed between 8 a.m. and 9:30 a.m. and hastening the reporting of trades and thereby increasing the likelihood that trades executed pre-market and after-hours will be closer to the prevailing market prices at the time they are reported. Such trades that are away from the prevailing market due to a delay in their reporting would be appropriately modified to alert the public to that delay.

The proposed rule change would eliminate the confusion and burden created by having different trade reporting obligations for different securities. The proposal would impose the same reporting obligations for transactions in exchange-listed securities that currently exist for transactions in Nasdaq-listed securities reported to the Nasdaq Stock Market and the NASD Alternative Display Facility, and for transactions in non-Nasdaq over-the counter securities.<sup>6</sup> By bringing NASD Rule 6420(a) into line with other existing obligations, Nasdaq would eliminate confusion that currently exists without imposing any additional burden on NASD members.

In fact, Nasdaq planned to make this precise change to exchange-listed transaction reporting in 2003 but inadvertently failed to include it in a rule proposal.<sup>7</sup> The 2003 Proposal

<sup>6</sup> See NASD Rules 5430(a) and 6620(a).

<sup>7</sup> See Securities Exchange Act Release No. 49581 (April 19, 2004); 69 FR 22578 (April 26, 2004) (SR-NASD-2003-159) ("2003 Proposal").

<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).

<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 text appearing in the NASD Manual available at <http://www.nasd.com>.

amended NASD Rules 5430, 6420, and 6620 to, among other things, change the reporting obligations for trades executed outside the hours of 8 a.m. and 6:30 p.m. The 2003 Proposal specifically amended the after-hours trade reporting obligations with respect to Nasdaq-listed and non-Nasdaq over-the-counter securities and should have similarly amended the obligations with respect to exchange-listed securities. The 2003 Proposal did accomplish part of that goal, amending the obligations with respect to trades executed between 4 p.m. and 6:30 p.m., but inexplicably failed to do so for the period between 6:30 p.m. and 9:30 a.m.

Implementation of the changes set forth in the 2003 Proposal was delayed pending further action by the Operating Committee of the Consolidated Tape Association which was recently completed. When Nasdaq announced the implementation of those changes set forth in the 2003 Proposal,<sup>8</sup> questions arose regarding market participants' obligations with respect to trades executed between 6:30 p.m. and 9:30 a.m. of the next day. Nasdaq has determined that modifying NASD Rule 6420(a) to conform to NASD Rules 5430 and 6620 would address those questions and alleviate any confusion that exists.

To ensure that market participants have adequate opportunity to prepare for this rule change, Nasdaq would make the proposed change effective on June 27, 2005. In addition, firms would have until September 1, 2005, before compliance with the rule would be mandatory. In the interim, firms would be permitted to report trades under the current rule or under the rule as modified in this proposal.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(6) of the Act,<sup>10</sup> in particular, in that Section 15A(b)(6) requires that the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would improve transparency and price discovery by providing additional, timely last sale information. Nasdaq believes that the proposed rule change also would enhance competition with other markets

that are open for pre-market trading at this time.

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

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

### 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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.

## 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-2005-065 on the subject line.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9309.

All submissions should refer to File Number SR-NASD-2005-065. 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 Room. 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-2005-065 and should be submitted on or before July 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>8</sup> See Nasdaq Head Trader Alert #2005-042, dated April 22, 2005.

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

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 17 CFR 200.30-3(a)(12).