

Section 6(b) of the Act,⁶ in general, and further the objectives of section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

This proposed rule change does not impose 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

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. CBOE-2002-18 and should be submitted by July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14430 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45998; File No. SR-NASD-2001-66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Display Requirements When Using Reserve Size in the Nasdaq National Market Execution System

May 29, 2002.

I. Introduction

On October 4, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to display requirements when using reserve size in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES"). On October 23, 2001 and October 29, 2001, NASD submitted Amendment Nos. 1 and 2 to the proposed rule change, respectively.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on November 13, 2001.⁴ The Commission received 233 comment letters on the proposed rule change.⁵

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letters from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 23, 2001 ("Amendment No. 1"); and October 29, 2001 ("Amendment No. 2").

⁴ See Securities Exchange Act Release No. 45016 (November 5, 2001), 66 FR 56875 (November 13, 2001).

⁵ A list of the commenters appears in the Appendix.

In addition, Nasdaq submitted two letters in response to comments.⁶ This order approves the proposed rule change, as amended.

II. Description of Proposal

Under the NNMS, market makers are allowed to keep shares in reserve. Known as reserve size, shares kept in reserve are available for execution through SuperSOES, but are not shown to the marketplace.⁷ Currently, the SuperSOES rules prohibit the use of the system's reserve size functionality unless a market maker is displaying at least 1000 shares in its public quote. Nasdaq proposes to eliminate the 1000-share display requirement for using reserve size. Under the proposed rule change, market makers would be allowed to use NNMS' reserve size any time they displayed a quote of at least one round lot (100 shares). Nasdaq would continue its policy of allowing the use of reserve size even if a particular displayed quotation dropped below 100 shares based on partial, interim executions against that un-updated quote.

III. Summary of Comments

As noted above, the Commission received 233 comment letters regarding the proposed rule change.⁸ A large majority of the letters were submitted by registered representatives, but commenters also included broker-dealer and market making firms, private investors, and a professional association. Five commenters supported the proposal,⁹ while the remaining 228 commenters opposed the proposal.

IV. Discussion

After carefully considering all the comments, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD.¹⁰ In particular, the Commission finds that the proposal

⁶ See letters from Thomas P. Moran, Associate General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2002 ("Nasdaq Letter I") and April 17, 2002 ("Nasdaq Letter II").

⁷ Under NNMS's execution algorithm, the system executes against all publicly-displayed shares at the same price level before executing in time priority against reserve size at that same price.

⁸ See *supra* note 5.

⁹ See Davenport Letter, Levine Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter.

¹⁰ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

is consistent with the requirements of Sections 15A(b)(6) of the Act.¹¹

1. Transparency Issues

Four commenters who supported the proposed rule change noted that the purpose of the reserve size feature is to provide market makers with a tool to limit the negative market impact associated with public knowledge of large pending transactions.¹² They further noted that electronic communication networks ("ECNs") offer reserve size functionality but are not subject to the 1000-share minimum display requirement that currently applies on Nasdaq. In the words of one commenter, the current 1000-share minimum display requirement on Nasdaq "serves as an alert to other market participants to the existence of reserve size in the system," and thus "defeats the purpose of the reserve size functionality."¹³ By contrast, this commenter contended, market participants cannot easily infer the existence of reserve size from ECN quotations.¹⁴

One commenter added that market makers should be free to enter any displayed or reserve size that suits their trading intentions, and forcing them to display such a large minimum size is unfair.¹⁵ This commenter noted that while proponents of the 1,000 share minimum display size for reserve orders claim that it forces market makers to display larger size to the marketplace, the opposite is true. The commenter noted that this argument assumes that if you restrict a market maker from entering his full intent with a 100 share displayed size, then he will enter it with a 1,000 share displayed size instead. The commenter believed that this assumption ignores several more attractive options available to a market

maker in this situation, such as: "(1) Withhold[ing] his intention to trade from the marketplace entirely and wait[ing] until the order becomes marketable to execute it, (2) forgo[ing] the Nasdaq reserve feature and enter[ing] only the number of shares he wishes to display into the marketplace and then manually 'refresh[ing]' his quote each time the displayed portion is executed, or (3) enter[ing] his order into an approved display alternative ATS that is not subject to the 1,000 share restriction." According to the commenter, each of these alternatives legally defeats any purported benefits of the 1,000 share minimum rule, because each one also has a negative impact on market quality when compared to permitting the market maker use his reserve quote directly.

Other commenters argued that the ability of a market maker to conceal a large reserve size while displaying only 100 shares runs counter to the goal of market transparency¹⁶ and would

controvert price discovery.¹⁷ Specifically, several commenters expressed concern that investors would be unable to properly assess risk and reward, gauge the market's direction, and make informed decisions about how to invest with the reduced display size.¹⁸ At the same time, some added, the market maker will have the advantage of knowing the size of incoming orders.¹⁹

In response, Nasdaq offered several arguments in support of its view that, contrary to commenters' concerns, the proposal will not materially impact transparency in its market.²⁰ First, Nasdaq challenged the premise that the 1000-share minimum display requirement is a key component in encouraging the display of significant trading interest. A recent review of SuperSOES indicated that only 13.9 percent of market maker quotes large enough to use reserve size actually had a reserve share amount attached to them.²¹

Second, Nasdaq argued that transparency has more than one component, such as trade price and volume information. Nasdaq asserted that the speed and reliability of such information has dramatically improved, with SuperSOES providing instantaneous automatic executions and immediate dissemination of the resulting transaction information via the public tape.

Finally, Nasdaq argued that, because all displayed size at a given price level

¹⁶ See A. Wang Letter, Abelson Letter, Arberman Letter, Atreya Letter, B. Hepner Letter, B. Lee Letter, B. Williams Letter, Bailyn Letter, Balber Letter, Ball Letter, Bauer Letter, Block Letter, Bouldin Letter, Bradshaw Letter, Burgess Letter, C. Kim Letter, C. Shapiro Letter, Cammarata Letter, Catrina Letter, Chan Letter, Chesler Letter, Chinnock Letter, Ciemens Letter, Corl Letter, Cosenza Letter, Cosic Letter, Crosby Letter, Crowell Letter, D. Cohen Letter, D.H. Kim Letter, Daulong Letter, Deligiannis Letter, Dershow Letter, Dhillion Letter, Diamond Letter, Diemar Letter, Dolnier Letter, Dondero Letter, Donitz Letter, Donnelly Letter, Dubin Letter, E. Goldstein Letter, E. Knight Letter, E. Shapiro Letter, El-Assad Letter, Erman Letter, Ettles Letter, F. Raffaele Letter, Falcone Letter, Federici Letter, Feeny Letter, Feinstein Letter, Flaherty Letter, Gaida Letter, Getz Letter, Giannone Letter, Gialquinto Letter, Giordano Letter, Goldhair Letter, Gormley Letter, Gosling Letter, Greeley Letter, Gregg Letter, Grill Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Helfman Letter, Herrick Letter, Heyman Letter, Hinkel Letter, Hite Letter, Hodges Letter, Hong Letter, Hotchkiss Letter, Ingles Letter, Ingram Letter, Isaacson Letter, Ives Letter, Iwasa Letter, J. Choi Letter, J. Hughes Letter, J. Kirstein Letter, J. Raffaele Letter, J. Schmidt Letter, J. Weintraub Letter, J. Williams Letter, Jahng Letter, Jones Letter, K. Kirstein Letter, K. Murphy Letter, K. Schroeder Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kerman Letter, King Letter, Klarreich Letter, Klaus Letter, Klein Letter, Kobin Letter, Kobin Letter, Kott Letter, Kovac Letter, Kropf Letter, Kushner Letter, L. Waxman Letter, LaBonar Letter, Lay Letter, Leung Letter, Linton Letter, Liu Letter, Lopez Letter, Lopin Letter, Lovett Letter, M. Murphy Letter, M. Schroeder Letter, Magat Letter, Majid Letter, Malizia Letter, Markasevic Letter, Masso Letter, Mikhelson Letter, Miller Letter, Miller Letter, Morant Letter, Morgan Letter, Namolik Letter, Nemcic Letter, Nicoletta Letter, Nierling Letter, No Letter, O'Malley Letter, Oahana Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Piskun Letter, Poulton Letter, R. Murphy Letter, Ratto Letter, Rea Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schultz Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Sinclair Letter, Skinner Letter, Sohn Letter, Song Letter, Squires Letter, Stengel Letter, Strum Letter, Stuzin Letter, Sukenick Letter, Talib Letter,

Thompson Letter, Towne Letter, Vo Letter, Ward Letter, Washburn Letter, Watts Letter, Weckherlen Letter, West Letter, Wilson Letter, Yang Letter, Yang Letter, Z. Hepner Letter, Zemeck Letter, Zlatkovic Letter, and Zour Letter.

¹⁷ See Goldhair Letter, J. Weintraub Letter, M. Murphy Letter, Nierling Letter, and Weckherlen Letter.

¹⁸ See B. Hepner Letter, Bailyn Letter, Bouldin Letter, Ciemens Letter, Cosenza Letter, Deligiannis Letter, Dhillion Letter, E. Shapiro Letter, Gaida Letter, Giannone Letter, Gialquinto Letter, Hite Letter, J. Hughes Letter, K. Schroeder Letter, Klein Letter, Kobin Letter, M. Murphy Letter, M. Schroeder Letter, Malizia Letter, Roldan Letter, Schreiber Letter, Schuldenfrei Letter, Sinclair Letter, Vo Letter, Watts Letter, and Weckherlen Letter, *see also* C. Shapiro Letter, (discussing the effect of "information asymmetry").

¹⁹ See Schreiber Letter, M. Schroeder Letter, and Washburn Letter.

²⁰ See Nasdaq Letter I.

²¹ In Nasdaq Letter I, Nasdaq provided data for Nasdaq market makers and exchanges trading Nasdaq stocks pursuant to unlisted trading privileges ("UTP exchanges"). According to Nasdaq, only 13.5 percent of market maker and UTP exchange quotes large enough to use reserve size actually had a reserve share amount attached to them. In a subsequent telephone conversation, Nasdaq provided data for just market maker quotes. Telephone conversation between Terri Evans, Assistant Director, Division, Commission, and Thomas P. Moran, Associate General Counsel, Nasdaq, on May 23, 2002.

¹¹ 15 U.S.C. 78o-3(b)(6). Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹² See Davenport Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter. As explained in the Robertson Stephens Letter, the potential negative impact results from the fact that public knowledge of unusual supply or demand in a particular security can cause other market participants to revise their displayed quotations to price levels that would be less favorable to the customer.

¹³ See Robertson Stephens Letter.

¹⁴ See Robertson Stephens Letter, *see also* Morgan Keegan Letter.

¹⁵ See Levine Letter.

has priority in execution over reserve size at the same price, market participants desiring to trade immediately and in size have incentives to quickly display larger share amounts. In this context, Nasdaq cited statistics to show that the average display size of quotes today has increased 83 percent from the average display size immediately following decimalization and before SuperSOES was introduced. Nasdaq believes that these statistics show that market participants are more inclined to display larger size in the fast-moving SuperSOES environment.

The Commission believes that Nasdaq has adequately addressed the concerns raised by commenters. While the Commission recognizes that the proposed rule change appears to limit transparency by reducing the minimum number of shares that must be displayed before a market maker can use reserve size, the Commission agrees with the opinion of one commenter that market makers will not necessarily display 1000 shares just to use the reserve size feature in SuperSOES, in lieu of other options such as sending an order to an ECN. Even aside from the minimum display requirement, the Commission believes that market participants will still have an incentive to display greater size, because SuperSOES executes incoming orders against displayed size at the best price before accessing reserve size at the same price level. Therefore, it may be in a market participant's best interest to display greater size and receive an immediate execution. The Commission notes that Nasdaq has offered data that indicates that only a small portion of quotes large enough to potentially use reserve size, actually have a reserve share amount attached to them.

2. Liquidity Issues

One commenter who supported the proposed rule change believed that the current, 1000-share minimum display requirement inhibits liquidity.²² Rather than meet that requirement, this commenter argued, a market maker may choose to withhold his intention to trade from the marketplace entirely and wait until an order he is holding becomes marketable to execute it.²³

On the other hand, many commenters objected to the proposal on the grounds that it would negatively impact market liquidity.²⁴ Some of these commenters

expressed the view that the ability to display only 100 shares would allow market makers to limit the availability of stock at the inside market,²⁵ and provide little liquidity during a severe upturn or downturn.²⁶ These commenters appeared to believe that, under the proposal, when a market maker at the inside price is displaying only 100 shares while maintaining a large reserve size at that same price, the system would fill incoming orders at a rate of only 100 shares at a time. During the time lag that would result, the market maker would have time to withdraw most of the liquidity stored in his reserve size if this would be to his advantage, as it might be in volatile markets.²⁷

One commenter observed that in approving the original SuperSOES system and its reserve size feature, the Commission cited the justification set forth by Nasdaq that the 1000-share display requirement would increase liquidity by providing an incentive for market makers to display a larger quotation size.²⁸ "We are confounded," this commenter stated, "that the NASD would reverse its previous position and propose to pare back the reserve size requirement to a single round lot," particularly in view of "the substantial deterioration of displayed market liquidity in the post-decimals environment."²⁹

In response to liquidity concerns, Nasdaq insisted that nothing in the

Letter, D. Cohen Letter, D. H. Kim Letter, D'Aleo Letter, Deligiannis Letter, Diemar Letter, E. Goldstein Letter, El-Assad Letter, Erman Letter, F. Raffaele Letter, Feeney Letter, Getz Letter, Giaquinto Letter, Goldhair Letter, Greeley Letter, Gregg Letter, Grill Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Hodges Letter, Hotchkiss Letter, Ingles Letter, Isaacson Letter, Iwasa Letter, J. Hughes Letter, J. Raffaele Letter, Jones Letter, K. Choi Letter, K. Kirstein Letter, Kaneti Letter, Klarreich Letter, Klaus Letter, Kobin Letter, LaBonar Letter, Landsman Letter, Lovett Letter, Lutz Letter, Magat Letter, Majid Letter, Masso Letter, McCabe Letter, Nicoletta Letter, Nierling Letter, O'Malley Letter, Oahana Letter, Orgen Letter, Parsons Letter, Petrov Letter, Plotkin Letter, Ratto Letter, Rebatta Letter, Schulberg Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Sinclair Letter, Sohn Letter, Squires Letter, Stancevic Letter, Stengel Letter, Stuzin Letter, Sullivan Letter, Weckherlen Letter, West Letter, Wilson Letter, Yang Letter, Zemeck Letter, and Zour Letter.

²⁵ See Cammarata Letter, Ciemens Letter, Isaacson Letter, J. Hughes Letter, Linton Letter, Lovett Letter, McCabe Letter, Song Letter, Stengel Letter, and Zucker Letter.

²⁶ See Giaquinto Letter.

²⁷ Many commenters explicitly stated their belief that the proposal would create market slowdowns due to multiple executions of displayed and refreshed 100-share lots at the inside price. See *more at infra* notes 32–37 and accompanying text.

²⁸ See Morgan Stanley Letter (citing Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000)).

²⁹ *Id.*

reduction of the display size requirement could be expected to remove liquidity from its market.³⁰ According to Nasdaq, even though a market participant may elect to apportion their total trading interest between displayed size and reserve size differently, the same number of shares remain immediately accessible through the system. In addition, Nasdaq believes that to the extent the proposal limits the negative impact associated with the required display of large share size, the total amount of shares entered into SuperSOES may increase and thereby increase overall liquidity on Nasdaq.³¹

The Commission understands the concerns raised by commenters. However, the Commission believes that the ability to use reserve size under the proposal may give market participants on Nasdaq greater flexibility in representing large orders. In particular, the proposed rule change may prove useful to market participants who wish to minimize the market impact of their orders. Increased participation should, in turn, enhance liquidity of the market, to the benefit of all market participants. In addition, the Commission notes that a reduction in the displayed amount of liquidity does not necessarily signify a reduction in the amount of actual liquidity accessible in a market. As clarified by Nasdaq, the same amount of shares will be immediately accessible through the system.

3. Impact on Executions and Potential for Abuse

Many commenters believed that orders sent to Nasdaq that today can be filled in one execution would require multiple executions to be filled under the proposed system,³² and that the

³⁰ See Nasdaq Letter I.

³¹ *Id.*

³² See A. Wang Letter, Abelson Letter, Atreya Letter, B. Lee Letter, B. Williams Letter, Bailyn Letter, Balber Letter, Bauer Letter, Ben-Aharon Letter, Benetti Letter, Block Letter, Bouldin Letter, Brook Letter, C. Kim Letter, Cammarata Letter, Caputo Letter, Catrina Letter, Chan Letter, Chan Letter, Chaudry Letter, Chesler Letter, Chinnock Letter, Ciemens Letter, Cori Letter, Cosenza Letter, Cosic Letter, Crosby Letter, Crowell Letter, D.H. Kim Letter, D'Aleo Letter, Daulong Letter, Diamond Letter, Diemar Letter, Dondero Letter, Dubin Letter, E. Goldstein Letter, E. Knight Letter, El-Assad Letter, Erman Letter, F. Raffaele Letter, Falcone Letter, Feinstein Letter, Flaherty Letter, Gaida Letter, Getz Letter, Gormley Letter, Gregg Letter, Grill Letter, Gussin Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Hayden Letter, Helfman Letter, Hite Letter, Hodges Letter, Hong Letter, Ingles Letter, Isaacson Letter, Ives Letter, J. Choi Letter, J. Goldstein Letter, J. Hughes Letter, J. Raffaele Letter, J. Weintraub Letter, J. Williams Letter, Jones Letter, K. Choi Letter, K. Kirstein Letter, K. Schroeder Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kinzelberg Letter, Klaus Letter, Klein Letter, Kobin Letter, Kott Letter, Kropf Letter,

Continued

²² See Levine Letter.

²³ *Id.*

²⁴ See Abelson Letter, Arberman Letter, Atreya Letter, B. Hepner Letter, Bailyn Letter, Benetti Letter, Bouldin Letter, C. Kim Letter, C. Shapiro Letter, Cammarata Letter, Catrina Letter, Chan Letter, Ciemens Letter, Crosby Letter, Crowell

resulting time lag would slow down the entire market, unfairly advantage market makers, and lend to widespread abuse. Various commenters believed that the proposal would promote deception,³³ foster manipulative conduct,³⁴ facilitate monopoly pricing and collusion,³⁵ and result in inefficiency.³⁶

By way of example, many commenters noted that under the current system, when a market maker displays 1000 shares at the inside market—as required for use of the reserve size feature—an incoming order of up to 1000 shares is filled immediately against that displayed quotation, in one execution. Under the proposal, these commenters believe, because the same market maker would be required to display only 100 shares and could hold the remaining 900 shares in reserve size, each time 100 shares of an incoming order is filled, the system would need to refresh the displayed size again before the next 100 shares could be filled, causing the execution of a full 1000 shares to take ten times as long.³⁷

L. Waxman Letter, LaBonar Letter, Laughlin Letter, Lazarus Letter, Liu Letter, Lovett Letter, Lutz Letter, M. Schroeder Letter, M. Sherwood Letter, Magat Letter, Majid Letter, Malizia Letter, Markasevic Letter, Masso Letter, McCabe Letter, Miller Letter, Morant Letter, Morgan Letter, Nemcic Letter, No Letter, Oahana Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Philip Letter, Plotkin Letter, R. Murphy Letter, Rea Letter, Rebatta Letter, Roldan Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Sc. Sullivan Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schwartz Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Shorack Letter, Sinclair Letter, Sinreich Letter, Sohn Letter, Stancevic Letter, Stengel Letter, Strum Letter, Stuzin Letter, Talib Letter, Thompson Letter, Towne Letter, Voldarsky Letter, Ward Letter, Washburn Letter, Watts Letter, Williamson Letter, Yang Letter, Zemeck Letter, Zlatkovic Letter, Zour Letter, and Zucker Letter.

³³ See Cammarata Letter, D.H. Kim Letter, Deligiannis Letter, Gaida Letter, Garby Letter, Gregg Letter, Hansford Letter, Heyman Letter, Isaacson Letter, J. Williams Letter, Kernan Letter, Lazar Letter, Morgan Letter, R. Murphy Letter, Rebatta Letter, Squires Letter, and Stengel Letter.

³⁴ See Atreya Letter, Bailyn Letter, Benetti Letter, Burgess Letter, Crosby Letter, Crowell Letter, Dershow Letter, F. Raffaele Letter, Garby Letter, Goldhair Letter, Gregg Letter, Herrick Letter, Heyman Letter, J. Kirstein Letter, J. Raffaele Letter, Keane Letter, Lazar Letter, Linton Letter, Magat Letter, Masso Letter, Morgan Letter, Nierling Letter, Oshins Letter, Petrov Letter, Rea Letter, S. Kim Letter, Sherman Letter, Sinclair Letter, Stancevic Letter, Talib Letter, Watts Letter, and Wilson Letter, see also *infra* notes 27–30 and accompanying text.

³⁵ See C. Kim Letter, C. Shapiro Letter, and Crowell Letter.

³⁶ See Gaida Letter, Jones Letter, Kolin Letter, Kropf Letter, Landsman Letter, Linton Letter, and Weckherlen Letter.

³⁷ See Atreya Letter, C. Kim Letter, Chan Letter, Crowell Letter, F. Raffaele Letter, Gregg Letter, Hodges Letter, Ingram Letter, Ives Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Jahng Letter, K. Kirstein Letter, Klaus Letter, L. Waxman Letter, Landsman Letter, Magat Letter, Oahana

Many commenters contended that the reduced display requirement would benefit market makers at the expense of investors, allowing them, for example, to slow down the movement of a stock while minimizing their own exposure.³⁸ In the view of these commenters, under the proposal, a market maker could display the minimum 100 shares at the inside market while entering a large number of shares in reserve size at the same price. If he then saw the market shift direction, he could withdraw the liquidity in his reserve size and move it to a higher price level before investors could reach it, because the multiple executions of incoming orders at the inside price at a rate of only 100 shares at a time would give him the time to do so. In the words of many commenters, the proposal would thus effectively “eliminate liability orders.”³⁹

Commenters also variously argued that market makers would artificially stall the momentum of a stock so they could “back away” from liability for their reserve size;⁴⁰ misrepresent true supply and demand;⁴¹ and interfere with the natural direction of the market.⁴² Among the other abuses commenters feared were: a market maker holding up the price of a downward moving stock in order to

Letter, Panayotov Letter, Petrov Letter, Philip Letter, Plotkin Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, Salti Letter, Sherman Letter, Sinclair Letter, Watts Letter, Yang Letter, and Zlatkovic Letter.

³⁸ See Atreya Letter, Bauer Letter, Ben-Aharon Letter, Benetti Letter, Bouldin Letter, Brook Letter, C. Kim Letter, Cammarata Letter, Caputo Letter, Ciemens Letter, Dubin Letter, Gaida Letter, Giannone Letter, Hansford Letter, Hite Letter, Isaacson Letter, J. Goldstein Letter, J. Kirstein Letter, Keane Letter, Landsman Letter, Laughlin Letter, Linton Letter, Rea Letter, S. Sherwood Letter, Sc. Sullivan Letter, Stashefsky Letter, Stengel Letter, and Stuzin Letter.

³⁹ See A. Donnelly Letter, A. Wang Letter, Arberman Letter, Balber Letter, Brook Letter, Chan Letter, Chaudhry Letter, Chesler Letter, Daulong Letter, E. Goldstein Letter, Erman Letter, Ettles Letter, Garby Letter, H. Liu Letter, Hassell Letter, Hong Letter, Hotchkiss Letter, Ingles Letter, Ives Letter, Iwasa Letter, J. Choi Letter, J. Williams Letter, Jahng Letter, Kaneti Letter, Klaus Letter, Kott Letter, Kovac Letter, Kushner Letter, Lay Letter, Lopin Letter, Markasevic Letter, Miller Letter, Morant Letter, Nemcic Letter, O'Malley Letter, Oahana Letter, Piskun Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, S. Sherwood Letter, Schuldenfrei Letter, Shatkin Letter, Shorack Letter, Sohn Letter, Song Letter, Strum Letter, Talib Letter, Thompson Letter, Z. Hepner Letter, Zemeck Letter, and Zour Letter.

⁴⁰ See Chesler Letter, Corl Letter, Crowell Letter, Erman Letter, Fennell Letter, Hassell Letter, Hite Letter, J. Weintraub Letter, J. Williams Letter, K. Kirstein Letter, K.Y. Lee Letter, Kaneti Letter, Laughlin Letter, Lazarus Letter, Magat Letter, Murphy Letter, S. Sherwood Letter, Schuldenfrei Letter, Sharon Letter, Shatkin Letter, Sinclair Letter, Stengel Letter, Strum Letter, and Watts Letter.

⁴¹ See Bailyn Letter, Jones Letter, and Lovett Letter.

⁴² See Lazarus Letter, and Zour Letter.

short-sell ahead of the market;⁴³ a market maker holding down the price of an upward moving stock in order to buy more at a lower price;⁴⁴ and a market maker slowing the upward movement of a stock to prevent call options from being exercised against him.⁴⁵

Nasdaq believes that the above concerns may flow from a “fundamental misapprehension about how SuperSOES works.”⁴⁶ According to Nasdaq, although shares held in the reserve size feature are not displayed, these shares remain immediately and continuously available for execution through the system.

As described by Nasdaq, SuperSOES matches incoming orders with quotes based on price and size information resident in the system, and automatically executes against all shares of automatic-execution participants—whether displayed or in reserve— instantaneously. According to Nasdaq, “at no point during this execution process are automatic-execution market participants given an opportunity to decline to trade, or sent orders that require their assent to consummate a transaction.” In addition, according to Nasdaq, “SuperSOES is already a powerful salve for exactly those maladies that the commenters assert will befall the Nasdaq market if the 1,000-share display requirement is removed.”⁴⁷ For example, Nasdaq stated that the SuperSOES requirement

⁴³ See Klein Letter, Lazarus Letter, and Morant Letter.

⁴⁴ See Helfman Letter, Heyman Letter, Ingram Letter, and Linton Letter.

⁴⁵ See Liu Letter.

⁴⁶ See Nasdaq Letter II.

⁴⁷ See Nasdaq Letter II. Nasdaq provided the following example to illustrate the process. Assume that there are three market makers at the inside bid. Market Maker A (“MMA”) is bidding \$20.00 with a display size of 200 and a reserve size of 1,000. Market Maker B (“MMB”) is bidding \$20.00 with a display size of 300 and a reserve size of 4,000. Market Maker C (“MMC”) is bidding \$20.00 with a display size of 100 and a reserve size of 1,500. Market Maker D (“MMD”) is bidding \$19.99 with a display size of 100 and a reserve size of zero.

A 3,000-share market order to sell is entered into SuperSOES. A total of 600 shares would be instantaneously taken from the displayed sizes of MMA (200), MMB (300), and MMC (100). In addition, 1,000 shares would be instantaneously taken from MMA’s reserve size, and 1,400 shares would also be instantaneously taken from MMB’s reserve size, filling the incoming order in full.

This process would result in a single automatic execution of 1,200 shares for MMA, a single automatic execution of 1,700 shares for MMB, and a single automatic execution of 100 shares for MMC. Nasdaq represents that as a result of the automatic execution process “there is simply no way that an automatic-execution market participant, having placed share amounts (displayed or reserve) in SuperSOES, can inhibit or manipulate subsequent executions against that trading interest while those shares remain in the system.”

that automatic execution market participants be firm for the amounts and prices of the trading interest they place into the system reduces the potential for, and increases the costs of, attempts to manipulate the market. Likewise, the swift and sure execution of orders by SuperSOES based on price-time priority greatly increases the confidence of investors that they are being treated fairly.

The Commission agrees that a great many of the commenters appear to have misunderstood the way the reserve size feature operates and the nature of the proposed rule change. This misunderstanding appears to be the basis of many of the opposing comments. The Commission notes that when an order is sent to Nasdaq for automatic execution through SuperSOES, the system immediately accesses all liquidity at the best price residing within the system to fill that order, whether that liquidity is displayed or held in reserve size. As Nasdaq has represented in its responses to commenters' objections, the automatic execution against all such resident size takes place instantaneously.⁴⁸ When an order cannot be filled by the market maker's displayed size alone (or by the aggregate displayed size of all market makers at the same best price, if there is more than one market maker at that price), the system immediately accesses the reserve size behind it (and behind the displayed size of all market makers at that price, in time priority), and trades against it all in a single execution for each market maker.

4. Competitive Issues

Four commenters maintained, in support of the proposal, that it would promote fair competition across the markets.⁴⁹ As explained by one commenter, for example, it would level the playing field between Nasdaq participants and members of UTP exchanges, and between Nasdaq and its primary competitors, ECNs and the regional exchanges.⁵⁰ Specifically, two commenters argued that Nasdaq is the only market center that imposes a 1000-share display requirement, and is thus competitively disadvantaged.⁵¹ Another commenter noted that it is "fundamentally unfair to force a market participant to depend on a potential competitor [if a market maker enters an order into an ATS] due to an artificial

regulatory disparity between the two participants."⁵²

Other commenters argued that the function of an ECN is different than that of market makers on Nasdaq,⁵³ in that an ECN's purpose is to display and execute orders and not to make markets.⁵⁴ Some commenters added that an ECN is not afforded the same advantages as market makers⁵⁵ (e.g., the ability to make a profit on the market spread),⁵⁶ and thus should not be subject to the same minimum display requirements.

One commenter cited a recent Nasdaq study indicating that in the post-decimalization environment, the average quote size posted by an ECN was 1190 shares, challenging with this data Nasdaq's argument that it needs to reduce Nasdaq's display-size requirement to 100 shares in order to compete.⁵⁷ This commenter believed that the proposed rule change would provide a "rather marginal competitive benefit" to Nasdaq at a "high cost to market liquidity and transparency."⁵⁸ The same commenter further argued that Nasdaq, as a subsidiary of a national securities association, is bound by the Act to maintain rules that "remove impediments to and perfect the mechanism of a free and open market," which, the commenter stated, is a higher standard than that imposed by the regulatory framework governing ECNs.⁵⁹

In response, Nasdaq noted that Archipelago Exchange, an equity trading facility of the Pacific Exchange, offers reserve size functionality with no apparent minimum display requirement, as do ECNs that provide alternative venues to trade Nasdaq securities.⁶⁰ In addition, Nasdaq asserted that, in fact, no other market center providing reserve size imposes a requirement to display a 1000 share quote for the privilege.

Nasdaq also challenged the relevance of data showing that the average display

size on ECNs is 1,190 shares as undermining Nasdaq's contention that it needs to reduce its own minimum display size to 100 shares in order to compete.⁶¹ According to Nasdaq, in many cases ECNs aggregate orders from multiple subscribers, while market makers may or may not aggregate trading interest. Further, an average quote on a system that places no restriction on the use of reserve size is different, Nasdaq maintained, than a system that has a minimum display requirement inhibiting the use of its reserve size feature. Moreover, Nasdaq argued, an average size of 1,190 indicates that in many cases ECNs in fact display quotes of less than 1000 shares, with reserve size functionality, while Nasdaq market makers cannot provide their customers with the same. To further bolster its argument that it needs to reduce the display minimum in order to compete, Nasdaq cited a recent review it conducted of reserve size usage by ECNs, which found that almost 40 percent of ECN quotes accessed by SelectNet had a reserve size behind them, and that of those 40 percent, 75 percent were displaying less than 1000 shares.⁶²

As noted above, the Commission has previously approved rules of an exchange (specifically, the Archipelago Exchange)⁶³ that provide for a reserve size functionality with no minimum-size display requirement, reflecting the Commission's belief that such rules are not inconsistent with the Act. Moreover, the Commission believes that the proposed rule change may afford participants on Nasdaq greater flexibility in handling large orders in a manner enabling them to compete with participants in other market centers. The Commission is not aware of any issues regarding the use of reserve size with no display requirement on the Archipelago Exchange, and believes, further, that Nasdaq has adequately addressed the other major issues raised by commenters concerning transparency, liquidity, and impact on executions and potential for abuse in its own proposed system. Thus, to deny Nasdaq the ability to reduce its display size requirement, in the Commission's view, would inhibit fair competition among markets.

5. Timing of the Proposed Rule Change

A large number of commenters argued that it was too soon after the implementation of SuperSOES to

⁵² See Levine Letter.

⁵³ See Abelson Letter, Benetti Letter, Burgess Letter, Herrick Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Kott Letter, Oahana Letter, Panayotov Letter, Rebatta Letter, Stengel Letter, Thompson Letter, and Zlatkovic Letter.

⁵⁴ See Abelson Letter, Ball Letter, Burgess Letter, E. Goldstein Letter, Gosling Letter, Hansford Letter, Ingram Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Kernan Letter, Oahana Letter, Panayotov Letter, Rebatta Letter, Stengel Letter, Thompson Letter, Voldarsky Letter, and Zlatkovic Letter.

⁵⁵ See Benetti Letter, Herrick Letter, Ingram Letter, J. Raffaele Letter, Kott Letter, Schultz Letter, and Stengel Letter.

⁵⁶ See, e.g., Kroft Letter.

⁵⁷ See Morgan Stanley Letter.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See Nasdaq Letter I.

⁴⁸ See Nasdaq Letter I.

⁴⁹ See Davenport Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter.

⁵⁰ See STA Letter, *see also* Levine Letter.

⁵¹ See STA Letter and Davenport Letter.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *supra*, note 24.

introduce the proposed changes,⁶⁴ and that more time was necessary to collect meaningful data and evaluate the current system before modifying it in this significant way.⁶⁵ Some commenters believed that the two months of trading on the SuperSOES System before the proposal was first filed were a slow trading period and unrepresentative of typical market conditions.⁶⁶ Many commenters also noted that the proposal was published relatively soon after the impact of the

September 11, 2001 terrorist attacks on America,⁶⁷ and wrote that it was difficult to meaningfully consider the potential effect of the proposed changes during a period in which the markets and market participants were still recovering from that episode.

Nasdaq contended that, in view of the competitive process, it must be free to quickly respond to the marketplace, and rejected the notion that its ability to alter and improve its systems is limited by how short a period of time had elapsed since a system was last changed.⁶⁸

The Commission believes that in view of the further passage of time since the proposed rule change was filed, these timing issues are no longer sufficient a concern to warrant a delay in the Nasdaq's ability to adopt the proposed rule change. The Commission expects NASD Regulation and Nasdaq to monitor trading to ensure the proper use of the reserve size feature and reevaluate the minimum display requirement if there is an overall decline in the quality of the market.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶⁹ that the proposed rule change (SR–NASD–2001–66) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷⁰

Margaret H. McFarland,
Deputy Secretary.

Appendix

1. Letter from Robert A. Gaida Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 (“Gaida Letter”).

2. Letter from Edward J. Keane Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Keane Letter”).

3. Letter from David Schwartz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 (“Schwartz Letter”).

4. Letter from Keith A. Donitz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 (“Donitz Letter”).

5. Letter from Frantisek Kovac, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 (“Kovac Letter”).

6. Letter from Brian J. Dershow, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Dershow Letter”).

7. Letter from Kathleen Murphy, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 (“Murphy Letter”).

8. Letter from Matthew C. Rea, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Rea Letter”).

9. Letter from David B. Feinstein, Principal, Dodo Ventures, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 (“Feinstein Letter”).

10. Letter from Eugene C. Giaquinto, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Giaquinto Letter”).

11. Letter from Joseph J. Gormley III, Small Investor, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 (“Gormley Letter”).

12. Letter from R. Travis Williamson, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Williamson Letter”).

13. Letter from David Lui, Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 (“Lui Letter”).

14. Letter from Seth Helfman, to Jonathan G. Katz, Secretary, SEC, dated October 19, 2001 (“Helfman Letter”).

15. Letter from David M. Kushner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 (“Kushner Letter”).

16. Letter from Edward Miller, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 (“Miller Letter”).

17. Letter from Jonathan R. Goldstein, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 (“J. Goldstein Letter”).

18. Letter from Harlan R. Schreiber, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 (“Schreiber Letter”).

19. Letter from Eric A. Shapiro, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“E. Shapiro Letter”).

20. Letter from Sean Ward, to Jonathan G. Katz, Secretary, SEC, dated October 19, 2001 (“Ward Letter”).

21. Letter from Stephen M. Hughes, to Jonathan G. Katz, Secretary, SEC, dated October 20, 2001 (“S. Hughes Letter”).

22. Letter from John R. Hughes III, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 (“J. Hughes Letter”).

23. Letter from Erika Roth-McEnroe, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 (“Roth-McEnroe Letter”).

24. Letter from Matthew Bouldin, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Bouldin Letter”).

25. Letter from Joseph Dondero, Individual Investor, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 (“Dondero Letter”).

26. Letter from Ronen T. Zour, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 (“Zour Letter”).

27. Letter from Michael Parsons, Registered Representative, to Jonathan G. Katz,

⁶⁴ See A. Donnelly Letter, A. Wang Letter, Abelson Letter, Atreya Letter, B. Donnelly Letter, Balber Letter, Ben-Aharon Letter, Benetti Letter, Block Letter, Bouldin Letter, Burgess Letter, C. Kim Letter, Caputo Letter, Chesler Letter, Choi Letter, Ciemens Letter, Cosenza Letter, Crowell Letter, D'Aleo Letter, Dershow Letter, Diemar Letter, Dolnier Letter, Donitz Letter, E. Goldstein Letter, E. Knight Letter, Edmonds Letter, Erman Letter, Ettles Letter, F. Raffaele Letter, Feinstein Letter, Frank's Lee Letter, Gaida Letter, Garby Letter, Getz Letter, Giannone Letter, Giordano Letter, Goldhair Letter, Gormley Letter, Gregg Letter, Grill Letter, Gussin Letter, H. Liu Letter, Hansford Letter, Hayden Letter, Helfman Letter, Herrick Letter, Hodges Letter, Hotchkiss Letter, Ingram Letter, Ives Letter, Iwasa Letter, J. Goldstein Letter, J. Hughes Letter, J. Kirstein Letter, J. Raffaele Letter, J. Schmidt Letter, J. Williams Letter, Jahng Letter, K. Kirstein Letter, K. Murphy Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kinzelberg Letter, Klarreich Letter, Klaus Letter, Klein Letter, Kobin Letter, Kott Letter, Kovac Letter, Kushner Letter, L. Waxman Letter, LaBonar Letter, Landsman Letter, Leung Letter, Lopin Letter, Lovett Letter, Lutz Letter, Magat Letter, McCabe Letter, Miller Letter, Miller Letter, Morant Letter, Morgan Letter, Namolik Letter, Nemcic Letter, Nicoletta Letter, Nierling Letter, Oahana Letter, Orgen Letter, Oshins Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Philip Letter, Plotkin Letter, Poulton Letter, R. Murphy Letter, R. Murphy Letter, Rea Letter, Rebatta Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schultz Letter, Schwartz Letter, Senna Letter, Shatkin Letter, Sherman Letter, Shorack Letter, Sinclair Letter, Sinnreich Letter, Skinner Letter, Sohn Letter, Stancevic Letter, Stuzin Letter, Talib Letter, Teitelman Letter, Thompson Letter, Towne Letter, Voldarsky Letter, Ward Letter, Watts Letter, Weckherlen Letter, West Letter, Williamson Letter, Wilson Letter, Yang Letter, Yang Letter, and Zlatkovic Letter.

⁶⁵ See Abelson Letter, Ball Letter, Ball Letter, Bradshaw Letter, C. Kim Letter, Crowell Letter, Dolnier Letter, Federici Letter, Garby Letter, Giannone Letter, Gregg Letter, H. Liu Letter, Hinkel Letter, Hodges Letter, Ingles Letter, Ingram Letter, Isaacson Letter, Ives Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Jahng Letter, Kernan Letter, Klaus Letter, L. Waxman Letter, Landsman Letter, Leung Letter, Magat Letter, Miller Letter, Nicoletta Letter, Oahana Letter, Orgen Letter, Oshins Letter, Panayotov Letter, Paper Letter, Plotkin Letter, Ratto Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, Salti Letter, Sherman Letter, Sinclair Letter, Skinner Letter, Smith Letter, Sohn Letter, Squires Letter, Teitelman Letter, Travers Letter, Watts Letter, Weckherlen Letter, West Letter, Yang Letter, Yang Letter, and Zlatkovic Letter.

⁶⁶ See Feeney Letter, Garby Letter, Hotchkiss Letter, Ingles Letter, Ingram Letter, J. Raffaele Letter, Jahng Letter, Landsman Letter, Leung Letter, Magat Letter, Miller Letter, Nicoletta Letter, Oahana Letter, Salti Letter, Sinclair Letter, Smith Letter, Teitelman Letter, Watts Letter, Weckherlen Letter, and West Letter.

⁶⁷ See Benetti Letter, Burgess Letter, Cosenza Letter, Crowell Letter, Getz Letter, Giordano Letter, Ingram Letter, Kernan Letter, Klaus Letter, Magat Letter, Miller Letter, Nicoletta Letter, Nierling Letter, Oahana Letter, Oshins Letter, Plotkin Letter, R. Murphy Letter, Sherman Letter, Sohn Letter.

⁶⁸ See Nasdaq Letter I.

⁶⁹ 15 U.S.C. 78s(b)(2).

⁷⁰ 17 CFR 200.30–3(a)(12).

Secretary, SEC, undated, received November 20, 2001 ("Parsons Letter").

28. Letter from Bryan M. Donnelly, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("B. Donnelly Letter").

29. Letter from Jeffrey S. Schultz, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Schultz Letter").

30. Letter from John Chinnock, Securities Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Chinnock Letter").

31. Letter from Joel Brandon Jones, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Jones Letter").

32. Letter from Richard Lutz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Lutz Letter").

33. Letter from Corey N. Shapiro, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("C. Shapiro Letter").

34. Letter from Justin Namolik, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Namolik Letter").

35. Letter from Ryan E. Poulton, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Poulton Letter").

36. Letter from Mathew LaBonar, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("LaBonar Letter").

37. Letter from David Kinzelberg, Equity Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Kinzelberg Letter").

38. Letter from Blair Ettles, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ettles Letter").

39. Letter from Daniel Balber, NASD Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Balber Letter").

40. Letter from Feral Talib, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated November 15, 2001 ("Talib Letter").

41. Letter from Andrew Donnelly, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("A. Donnelly Letter").

42. Letter from Eric Klein, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("E. Klein Letter").

43. Letter from Carl Z. Giannone, Registered Representative, Limited Representative Equity Trader, General Securities Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giannone Letter").

44. Letter from Choi Kilyoung, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Kilyoung Letter").

45. Letter from Matthew Nemcic, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Nemcic Letter").

46. Letter from Kevin McCabe, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("McCabe Letter").

47. Letter from Elizabeth Goldstein, Registered Representative, MS, to Jonathan G.

Katz, Secretary, SEC, dated October 16, 2001 ("E. Goldstein Letter").

48. Letter from Benjamin Lee, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("B. Lee Letter").

49. Letter from John J. Morgan, Series 7 Trader, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Morgan Letter").

50. Letter from Daniel M. Stuzin, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Stuzin Letter").

51. Letter from Justin M. Gosling, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Gosling Letter").

52. Letter from Peter Ciemins, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ciemins Letter").

53. Letter from Markham E. Murphy, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 30, 2001 ("M. Murphy Letter").

54. Letter from Favian A. Roldan, Registered Broker, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Roldan Letter").

55. Letter from Jason A. Strum Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Strum Letter").

56. Letter from George F. Hassell, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Hassell Letter").

57. Letter from David Lazarus, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Lazarus Letter").

58. Letter from Ziad El-Assad, Registered NASD Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("El-Assad Letter").

59. Letter from Kevin Diemar, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Diemar Letter").

60. Letter from Michael Washburn, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received October 17, 2001 ("Washburn Letter").

61. Letter from Adam S. Chesler, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Chesler Letter").

62. Letter from Christian Daulong, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Daulong Letter").

63. Letter from Shari M. Sherwood, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("S. Sherwood Letter").

64. Letter from John D. Lovett, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Lovett Letter").

65. Letter from Stephen Edmonds, Registered Representative, Heartland

Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Edmonds Letter").

66. Letter from Jay Bailyn, Registered Representative, Heartland Securities, LLC, NASD Member, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Bailyn Letter").

67. Letter from Michael D. Linton, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Linton Letter").

68. Letter from Michael Sherwood, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("M. Sherwood Letter").

69. Letter from Christopher A. Hite, Registered NASD Principal, Heartland Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hite Letter").

70. Letter from Grier Laughlin, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Laughlin Letter").

71. Letter from Christopher Brook, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Brook Letter").

72. Letter from Damian Falcone, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, undated, received October 18, 2001 ("Falcone Letter").

73. Letter from Scott Sullivan, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Scott Sullivan Letter").

74. Letter from Sal Chaudhry, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Chaudhry Letter").

75. Letter from William Nathan Shorack, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Shorack Letter").

76. Letter from Richard T. Hayden, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hayden Letter").

77. Letter from Glen Dubin, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Dubin Letter").

78. Letter from Edward E. Hong, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hong Letter").

79. Letter from Tal Sharon, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sharon Letter").

80. Letter from Christopher Greeley, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Greeley Letter").

81. Letter from Jeremy Zucker, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Zucker Letter").

82. Letter from Joel Arberman, Registered Representative, to Jonathan G. Katz,

Secretary, SEC, dated November 19, 2001 ("Arberman Letter").

83. Letter from Joon Hwan Choi, Securities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("J. Choi Letter").

84. Letter from Boris M. Piskun, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Piskun Letter").

85. Letter from Marc R Grossman, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Grossman Letter").

86. Letter from Edward T. Flaherty Jr., to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Flaherty Letter").

87. Letter from Richard Lay, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Lay Letter").

88. Letter from Coreina Chan, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Coreina Letter").

89. Letter from Zachary Hepner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hepner Letter").

90. Letter from Douglas Song, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("D. Song Letter").

91. Letter from Michael O'Malley, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("O'Malley Letter").

92. Letter from Karl Sohn, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Sohn Letter").

93. Letter from Greg T. Bauer, to Jonathan G. Katz, SEC, dated October 15, 2001 ("Bauer Letter").

94. Letter from Evan Stashefsky, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Stashefsky Letter").

95. Letter from Keith Corl, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Corl Letter").

96. Letter from Alexander F. Zemek, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Zemek Letter").

97. Letter from Michael C. Malizia, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Malizia Letter").

98. Letter from Jeffrey Kirstein, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Kirstein Letter").

99. Letter from Keith Kirstein, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("K. Kirstein Letter").

100. Letter from Brian Ingram, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ingram Letter").

101. Letter from Andrew Rotter, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Rotter Letter").

102. Letter from Ira Landsman, CPA, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Landsman Letter").

103. Letter from Jimmie E. Williams, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Williams Letter").

104. Letter from Adam B. Salti, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Salti Letter").

105. Letter from Rami Abelson, Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Abelson Letter").

106. Letter from Andrew C. Sohn, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Sohn Letter").

107. Letter from Brandford Hotchkiss, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Brandford Letter").

108. Letter from Jefferson Magat, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Magat Letter").

109. Letter from Howard Teitelman, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Teitelman Letter").

110. Letter from Lee Waxman, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Waxman Letter").

111. Letter from Lee M. Weckherlen, Registered Representative, to Jonathan G. Katz, Secretary, SEC, Dated October 15, 2001 ("Weckherlen Letter").

112. Letter from Eric Orgen, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Orgen Letter").

113. Letter from Kevin Jahng, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Jahng Letter").

114. Letter from Brian M. Crowell, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Crowell Letter").

115. Letter from Marc Miller, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("M. Miller Letter").

116. Letter from Jeremy Ives, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ives Letter").

117. Letter from Tyler Isaacson, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, undated, received November 30, 2001 ("Isaacson Letter").

118. Letter from Timothy J. Wilson, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Wilson Letter").

119. Letter from Richard P. Getz, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Getz Letter").

120. Letter from Frank J. Kropf, Day Trader, Self-Employed, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Kropf Letter").

121. Letter from Kristin Hinkel, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Hinkel Letter").

122. Letter from Neal King, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("King Letter").

123. Letter from Do Hoon Kim, to Jonathan G. Katz, Secretary, SEC, dated November 30, 2001 ("D. Kim Letter").

124. Letter from Daniel J. Cosenza, Registered principal, to Jonathan G. Katz,

Secretary, SEC, dated November 30, 2001 ("Cosenza Letter").

125. Letter from Diane P. Murphy, Managing Director, Robertson Stephens, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 3, 2001 ("Robertson Stephens Letter").

126. Letter from Hedi H. Reynolds, Managing Director, Nasdaq Trading, Morgan Keegan & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 3, 2001 ("Morgan Keegan Letter").

127. Letter from Richard Cammarata, General Securities Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Cammarata Letter").

128. Letter from Thomas Ingles, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ingles Letter").

129. Letter from Charles R. Nierling, Registered Options Principal, to Jonathan G. Katz, Secretary, SEC, dated December 4, 2001 ("Nierling Letter").

130. Letter from Bill J. Deligiannis, Andover Trading, dated October 31, 2001.

131. Letter from Hummayun Majid, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Majid Letter").

132. Letter from Lee Lazar, Equity Trader, Chimera Capital, to Jonathan G. Katz, Secretary, SEC, dated October 24, 2001 ("Lazar Letter").

133. Letter from Samuel S. Mikhelson, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Mikhelson Letter").

134. Letter from Tal Plotkin, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Plotkin Letter").

135. Letter from Thomas A. Stengel, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 24, 2001 ("Stengel Letter").

136. Letter from Jay Crosby, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Crosby Letter").

137. Letter from Raymond J. Murphy, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("R. Murphy Letter").

138. Letter from Anthony J. Masso, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Masso Letter").

139. Letter from Joshua Levine, to Jonathan G. Katz, Secretary, SEC, dated December 6, 2001 ("Levine Letter").

140. Letter from Ronn Diamond, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated received December 13, 2001 ("Diamond Letter").

141. Letter from Matthew R. Keegan, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Keegan Letter").

142. Letter from Mehmed Markasevic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received December 18, 2001 ("Markasevic Letter").

143. Letter from Scott Sukenick, Registered Representative, to Jonathan G. Katz,

Secretary, SEC, undated, received December 26, 2001 ("Sukenick Letter").

144. Letter from Chris Paper, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Paper Letter").

145. Letter from Todd Skinner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Skinner Letter").

146. Letter from Samson Leung, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Leung Letter").

147. Letter from Robert B. Smith, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("R. Smith Letter").

148. Letter from Shuming Yang, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Shuming Letter").

149. Letter from Angelo C. Nicoletta, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Nicoletta Letter").

150. Letter from Timothy K. Dolnier, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Dolnier Letter").

151. Letter from Nicholas E. Federici, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Federici Letter").

152. Letter from Alex J. Lopez, Registered Principal/Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giordano Letter").

153. Letter from Michael D. Giordano, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giordano Letter").

154. Letter from Gangi Ratto, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ratto Letter").

155. Letter from Darren L. Heyman, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Heyman Letter").

156. Letter from Richard J. Travers III, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Travers Letter").

157. Letter from Michael Feeney, to Jonathan G. Katz, Secretary, SEC, undated, received January 2, 2002 ("Feeney Letter").

158. Letter from Ryan West, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("R. West Letter").

159. Letter from Thomas F. Bradshaw, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Bradshaw Letter").

160. Letter from John Kernan, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated received January 7, 2002 ("Kernan Letter").

161. Letter from Douglas Squires, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Squires Letter").

162. Letter from Christopher Ball, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("C. Ball Letter").

163. Letter from David Kobin, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Kobin Letter").

164. Letter from Alexander Chan, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("A. Chan Letter").

165. Letter from Kenneth Garby, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 7, 2002 ("Garby Letter").

166. Letter from Anton Panayotov, Equity Trader, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Panayotov Letter").

167. Letter from Greg A. Oshins, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Oshins Letter").

168. Letter from C. Kevin Yang, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Yang Letter").

169. Letter from Samuel Oahana, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Oahana Letter").

170. Letter from Charles J. Kim, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("C. Kim Letter").

171. Letter from Sunil Philip, Securities Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Philip Letter").

172. Letter from Harlan Thompson, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("H. Thompson Letter").

173. Letter from Jonathan W. Hodges, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hodges Letter").

174. Letter from Yusef J. Burgess, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Burgess Letter").

175. Letter from Matthew Watts, Broker, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Watts Letter").

176. Letter from John J. Raffaele, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Raffaele Letter").

177. Letter from Peter Zlatkovic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Zlatkovic Letter").

178. Letter from David Sherman, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sherman Letter").

179. Letter from Alexander Benetti, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Benetti Letter").

180. Letter from Adam Sinclair, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sinclair Letter").

181. Letter from Nikhil Atreya, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Atreya Letter").

182. Letter from Ilian Petrov, NASD Principal, to Jonathan G. Katz, Secretary,

SEC, dated October 15, 2001 ("Petrov Letter").

183. Letter from Richard Rebatta, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Rebatta Letter").

184. Letter from Christopher H. Klaus, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Klaus Letter").

185. Letter from John C. Giesa, President, and Michael A. Bird, Senior Vice Chairman, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated December 12, 2001 ("STA Letter").

186. Letter from Howard M. Liu, Securities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("H. Liu Letter").

187. Letter from Frank J. Raffaele, Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 11, 2001 ("F. Raffaele Letter").

188. Letter from Chris Gregg, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Greg Letter").

189. Letter from Igor Stancevic, Registered Principal, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Stancevic Letter").

190. Letter from Saeyoon Kim, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("S. Kim Letter").

191. Letter from Dokyun No, NASD Member, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("D. No Letter").

192. Letter from Kyle J. Schroeder, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Schroeder Letter").

193. Letter from Alexander Shatkin, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Shatkin Letter").

194. Letter from Darin E. Cohen, Individual Investor, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("D. Cohen Letter").

195. Letter from Michael Sinnreich, Equity Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Sinnreich Letter").

196. Letter from Robert L. Oliver, Professional Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Oliver Letter").

197. Letter from Randy Gussin, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("Gussin Letter").

198. Letter from Bruce Hepner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("Hepner Letter").

199. Letter from Dror Ben-Aharon, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Ben-Aharon Letter").

200. Letter from Bradford Kott, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Kott Letter").

201. Letter from Matthew Schroeder, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Schroeder Letter").

202. Letter from Jason Klarreich, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Klarreich Letter").

203. Letter from Eli Lopin, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Lopin Letter").

204. Letter from Ben Williams, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("B. Williams Letter").

205. Letter from Jason Towne, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated January 9, 2001 ("Towne Letter").

206. Letter from Kiet T. Vo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Vo Letter").

207. Letter from Isaak Volodarsky, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Volodarsky Letter").

208. Letter from Dario Cosic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Cosic Letter").

209. Letter from Jason Herrick, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Herrick Letter").

210. Letter from Simrin Dhillon, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Dhillon Letter").

211. Letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated December 4, 2001 ("Morgan Stanley Letter").

212. Letter from John Schmidt, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("J. Schmidt Letter").

213. Letter from Robert V. Morant, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Morant Letter").

214. Letter from Hirokazu Iwasa, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Iwasa Letter").

215. Letter from Eric P. Knight, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("E. Knight Letter").

216. Letter from Junghyun Won, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Won Letter").

217. Letter from Joshua A. D'Aleo, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 7, 2001 ("D'Aleo Letter").

218. Letter from Kerry Senna, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Senna Letter").

219. Letter from Kon-Young Lee, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("K. Lee Letter").

220. Letter from Alexander Wang, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("A. Wang Letter").

221. Letter from Charles William Hansford, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Hansford Letter").

222. Letter from Cary S. Grill, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Grill Letter").

223. Letter from Jonathan Schuldenfrei, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Schuldenfrei Letter").

224. Letter from Jeffrey Schulberg, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Schulberg Letter").

225. Letter from Cornel Catrina, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Catrina Letter").

226. Letter from Eliav Bock, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Bock Letter").

227. Letter from Marina J. Kaneti, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Kaneti Letter").

228. Letter from Kristopher Goldhair, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Goldhair Letter").

229. Letter from Joshua Weintraub, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Weintraub Letter").

230. Letter from David Caputo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Caputo Letter").

231. Letter from Tolga Erman, Registered Principal, to Jonathan G. Katz, Secretary, SEC, undated, received February 22, 2001 ("Erman Letter").

232. Letter from Brenda C. Blackard, First Vice President, Manager Nasdaq Trading, Davenport & Company LLC, to Jonathan G. Katz, Secretary, SEC, dated March 7, 2001 ("Blackard Letter").

233. Letter from Piers Fennell, Individual Investor, to Jonathan G. Katz, Secretary, SEC, dated April 2, 2001 ("Fennell Letter").

[FR Doc. 02-14139 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46013; File No. SR-NASD-2002-55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to the Minimum Life of Directed Orders in Nasdaq's SuperMontage System and the Minimum Life of SelectNet Orders

May 31, 2002.

On April 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) Establish a minimum life of five seconds for Directed Orders in Nasdaq's future Order Display and Collector

Facility ("NNMS" or "SuperMontage"), and (2) reduce from ten seconds to five seconds the minimum time period before an order entered into Nasdaq's SelectNet system may be cancelled by the entering party. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.³

The Commission received one comment regarding the proposal.⁴ According to this one commenter, the reduction from ten seconds to five seconds of the minimum life of SelectNet orders was both justified and beneficial, and would reduce opportunity costs as well as increase market efficiency. The commenter also believes that, "[b]ased on the current performance of the SelectNet system, the risk of rejected executions with a 5 second delay is almost zero. [Further, c]urrent SelectNet performance levels justify further cutting the delay down to as little as one second."

The Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15(A)(b)(6),⁶ which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq represents that the average time for a SelectNet order to be delivered to a recipient is 0.5 seconds, and that this standard will be maintained with Directed Orders in SuperMontage.⁷ The Commission finds that the proposal to establish a minimum life of five seconds for Directed Orders in SuperMontage is consistent with section 15A(b)(6) of the Act⁸ because it should provide market participants with a reasonable opportunity to respond to incoming orders before they are cancelled, while

³ See Securities Exchange Act Release No. 45813 (April 24, 2002), 67 FR 21792.

⁴ See e-mail comment from Joshua Levine to rule-comments@sec.gov, Commission, dated May 15, 2002.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on May 31, 2002.

⁸ 15 U.S.C. 78o-3(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.