

of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR-NASD-2001-51 and should be submitted by September 11, 2001.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44706; File No. SR-NASD-2001-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating To Trade Reporting of Listed Securities

August 15, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 13, 2001, 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") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ which renders the proposal effective upon filing with the Commission. On August 14, 2001, Nasdaq amended the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See August 13, 2001 letter from Thomas P. Moran, Office of General Counsel, Nasdaq to Alton Harvey, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq converted the proposal to a non-controversial filing pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6). Nasdaq has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make permanent 90-second trade reporting for over-the-counter transactions in listed securities that take place between 4 p.m. and 6:30 p.m. Eastern Time ("ET"). This proposed rule change is designed to conform the trade reporting obligations for transactions involving listed securities with those now in place for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were alerted as part of a separately operating pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. ET.⁵ The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

* * * * *

6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2)(A) No Change

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or the ACT Service Desk (if qualified pursuant to Rule 7010(i), or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3)(A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and [5:15] 6:30 p.m. Eastern Time as follows:

⁵ See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 10, 1999) (SR-NASD-99-57) (order extending the operation of certain Nasdaq services and facilities until 6:30 p.m. ET).

(i) by transmitting the individual trade reports through ACT on the next business day (T+1) between 8 a.m. and [5:15] 6:30 p.m. Eastern Time;
(ii) No Change.
(iii) No Change.

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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 its proposal and discussed any comments it received regarding the proposal. 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's Third Market is a quotation, communication and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX"). The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from these broker-dealers trading such securities in the over-the-counter market and provides the trade reports to the Consolidated Tape Association ("CTA/CQA") for inclusion in the Consolidated Tape. From 9:30 a.m. to 4 p.m. Eastern Time, NASD members registered as CQS market makers use Nasdaq's Computer Assisted Execution System ("CAES") to access the quotes of other CQS market makers and the Intermarket Trading System ("ITS") to access the quotes of other U.S. exchanges. Operation of ITS/CAES after 4 p.m. is consistent with all rules and procedures currently applicable to ITS/CAES trading and quotation activity during normal market hours.

In October of 1999, the Commission approved, on a pilot basis until March 1, 2000, a Nasdaq rule change mandating 90-second trade reporting of transactions in listed securities executed by NASD members in the third market until 6:30 p.m. ET. Previously, NASD member firms had to report such transactions within 90 seconds only until 5:15 p.m. ET. Due to an

administrative oversight by Nasdaq, the rule was not extended when its pilot approval terminated on March 1, 2000. Despite this lapse, NASD firms have continued to report listed trades done before 6:30 p.m. within 90 seconds of execution.⁶ To avoid such lapses in the future, and as an expression of its intent that 90-second after-hours trade reporting in listed securities should not have lapsed at any time, Nasdaq has determined to file the instant proposal to make permanent the rule mandating 90-second ACT trade reporting for all transactions in listed securities executed by NASD members prior to 6:30 p.m. ET. Nasdaq believes that 90-second trade reporting is an important component in increasing transparency and improving investor protection outside of normal market hours. By permanently extending 90-second listed trade reporting to 6:30 p.m. ET, the rule also becomes consistent with the Normal Business Hours of the Consolidated Quotation Service ("CQS") established in NASD Rule 6340. Approval of the rule change will also conform the time-related trade reporting obligations for transactions involving listed securities with those now in place for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were altered as part of a separately operating pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. ET.

2. Statutory Basis

Nasdaq believes that the proposed rule changes are consistent with the provisions of 15(a)(b)(6) of the Act⁷ in that they are 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.

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

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

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will correct the inadvertent lapse of the rule as soon as possible. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withdrawn from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR-NASD-2001-50 and should be submitted by September 11, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44695; File No. SR-PCX-2001-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Order Service Firms

August 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notices is hereby given that on August 7, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt PCX Rule 6.60 ("Order Service Firms") to allow members and member organizations to accept orders for the purchase and sale of stocks and futures contracts (and options thereon) from Exchange Market Makers and to forward such orders to the appropriate marketplace for execution. The text of the proposed rule change is available at the Office of the Secretary, the PCX and the Commission.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 7 CFR 240.19b-4.

⁶ Nasdaq notes that the inadvertent lapse of the rule did not impact any firm's ultimate obligation to report third market trades. Instead, the rule governed only the time period after execution in which a member must report. See NASD Rule 6420(3)(A).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).