MMA sold at 10.02 and did not meet the minimum price improvement required by the Manning rule (*i.e.*, .01 over Customer #1's order to buy at 10.0101). In effect, MMA has just bought stock at 10.02 and must sell that same amount of stock to Customer #1 at 10.0101 and thus lose .0099 cents per share on the interactions between these transactions. Under the proposed interpretation, MMA would no longer be required to fill both Customer orders since MMA acted as riskless principal for Customer #2.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [6] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received.

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

Within thirty-five 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 ninety 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 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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–66 and should be submitted by June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14299 Filed 6–6–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–3.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46016; File No. SR–NASD–2002–71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend a Pilot that Permits SuperSOES To Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

May 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 2002, the National Association of Securities Dealers, Inc. (''NASD''), acting through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) [1] of the Act, and Rule 19b–4(f)(6) thereunder,[2] which renders the proposal effective on filing with the Commission.[3] 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

There is no new language. The pilot rule language is as follows:

4710. Participant Obligations in NNMS

(a)–(e) No Change.

(f) UTP Exchanges.

(i) A UTP Exchange may voluntarily participate in the NNMS System according to the approved rules for the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges.

(ii) If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

(iii) For purposes of this rule the term ''UTP Exchange'' shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'').

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

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(3)(A).

[2] 17 CFR 240.19b–4(f)(6).

[3] Nasdaq asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

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

1. Purpose

Nasdaq is filing to extend until October 31, 2002, a pilot pertaining to a change to NASD Rule 4710, which specifies that if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes.[4]

The pilot is consistent with Nasdaq's long-standing goal to improve the quality of its market. Establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in that respect. Nasdaq's successful implementation of SuperSOES has significantly improved The Nasdaq Stock Market. In particular, Nasdaq's initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, neither SuperSOES nor the pilot has had a significant negative impact on spreads, depth or volatility. The ease with which the market reopened on September 17, 2001, appears to be directly connected to the efficiency of SuperSOES. In addition, the Chicago Stock Exchange (''CHX'') and the Boston Stock Exchange participate in SuperSOES.[5]

While SuperSOES is improving the operation of The Nasdaq Stock Market, Nasdaq has identified an area of concern that it believes must be addressed immediately to ensure the smooth functioning of the Nasdaq system. Specifically, if a UTP Exchange chooses to access Nasdaq but does not accept automatic executions through SuperSOES, there is a potential for queuing in the system that could disrupt and slow the market, when that exchange is alone at the best quote in The Nasdaq Stock Market. To improve the trading environment for all of Nasdaq's market participants, and to avoid potential significant market disruptions, Nasdaq is proposing to modify SuperSOES to remove non-automatic execution UTP Exchanges from the SuperSOES execution and order processing function.

Background. On January 14, 2000, the Commission approved a rule change to establish the Nasdaq National Market Execution System (''NNMS'') and to modify Nasdaq's SelectNet Service with respect to Nasdaq National Market securities (''NNM'').[6] On July 30, 2001, NNMS and the changes to SelectNet were implemented for all NNM issues. As approved and implemented, Nasdaq market participants can use two systems to trade NNM issues: a reconfigured Small Order Execution System (''SOES'')—the NNMS—and a reconfigured SelectNet system. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares.[7] By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.[8]

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, UTP Exchanges are not required to accept automatic executions. Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange. As a result, when a UTP Exchange is alone at the best bid/best offer for a particular security, and that UTP Exchange is only accessible via telephone, SuperSOES will stop processing orders in that security and will hold those orders in queue for up to 90 seconds.

This pause serves two purposes. First, it provides a Nasdaq market participant the opportunity to contact the UTP Exchange,[9] but at the risk of substantial queuing of market and marketable limit orders for that security as the Nasdaq market participant awaits a response to its order. Second, it enables a SuperSOES market participant (*i.e.,* market maker, Full Participant ECN, or participating UTP Exchange) to join the current best bid/best offer or create a new best bid/best offer.[10]

If, after 90 seconds, a SuperSOES market participant does not join the current best bid/best offer, and the UTP Exchange does not move its quote, SuperSOES returns the orders that are in queue and the system shuts down for that security. The system will only resume once the UTP Exchange moves its quote away from the inside.[11] Nasdaq believes that such delays will adversely affect Nasdaq's ability to ensure the proper functioning of its market through a major Nasdaq market system, and to enable market participants to obtain executions for their customers.

SuperSOES increases the speed of executions and improves the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to outbound Nasdaq orders, Nasdaq must be able to trade through the quotations of UTP Exchange participants that do not participate in Nasdaq via automatic execution.

Proposed Amendment. To address these problems, Nasdaq proposed, and the Commission approved, a pilot to amend NASD Rule 4710 to require that UTP Exchanges that choose to trade Nasdaq securities through Nasdaq market systems either participate fully

[4] The temporary approval of the pilot expires May 31, 2002. *See* Exchange Act Release No. 45496 (March 1, 2002), 67 FR 10785 (March 8, 2002).

[5] In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. *See* Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

[6] *See* Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[7] SOES was limited to small agency orders for customers.

[8] As originally proposed, market participants were permitted to enter into the modified SelectNet only: (1) those orders that specify a minimum acceptable quantity for a size that is at least 100 shares greater than the posted quote of the receiving market participant; or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

[9] The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, consistent with The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (the ''Nasdaq UTP Plan'') it provides telephone access to its quotes.

[10] This pause occurs because the quotes of UTP Exchanges and Order Entry ECNs are not accessible through SuperSOES, but only through the order-delivery portion of the system.

[11] To illustrate, assume CHX does not participate in SuperSOES and is alone at the current best bid of $20 for 1000 shares of ABCD. MMA enters an order into SuperSOES, and MMB directs (or preferences) 1,000 shares via SelectNet to CHX. If no other market maker or Full Participant ECN joins the current best bid of $20, SuperSOES stops processing orders in ABCD for 90 seconds. CHX waits 2 minutes before responding to MMB's preferenced SelectNet liability order either by filling or declining the order. (This delay could occur if there are equipment problems at CHX, in Nasdaq, or both.) The result is that the market in ABCD effectively is held up for 2 minutes and SuperSOES is shut off for ABCD (after 90 seconds.)

in the automatic executions through SuperSOES, or have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will trade through the UTP exchange's quote. This will prevent a UTP Exchange that is not otherwise accessible via SuperSOES from effectively shutting down the market in that security.[12]

UTP Exchanges that choose this option would be accessible by telephone as contemplated in the Nasdaq UTP Plan,[13] or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.[14] Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq proposed the pilot for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically since SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of Nasdaq's marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

Nasdaq wants to ensure that the market in a particular security does not shut down—thereby harming investors and the market—if there is an unresponsive UTP Exchange setting the current best bid/best offer for that security. Nasdaq recognizes the importance of maintaining price priority and ensuring that market participants receive the best possible price in the market. As such, SuperSOES was originally designed not to trade through the best quote that appears in the Nasdaq montage. However, that premise assumed all quotes would be immediately accessible.[15] SuperSOES must be able to continue operating when a particular quote is not accessible by market participants. To that end, if a UTP Exchange chooses not to participate in SuperSOES, and that UTP Exchange sets the inside bid or ask, Nasdaq will enable SuperSOES not to include that UTP Exchange's quotation for order processing and execution.

Participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it was appropriate to alter the terms under which a UTP Exchange participates in The Nasdaq Stock Market to address all of the concerns described in this proposal. For the same reasons, it is important to continue the pilot program to preserve the status quo as additional UTP Exchanges prepare to commence trading Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[16] in that the proposal is designed to facilitate 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. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of non-automatic execution UTP Exchanges is necessary for the fair and orderly operation of The Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible and is alone at the best bid or best offer.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6), thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 waive the 30-day operative delay. The Commission finds good cause to waive both the 5-day pre-filing notice requirement and the 30-day operative delay, because the waivers are consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the NASD pilot to continue in operation without interruption. Nasdaq states that the pilot reduces the potential for a shut down in Nasdaq's automatic execution systems. Up to three additional securities exchanges plan to begin trading Nasdaq securities within several months. Nasdaq's inability to maintain the status quo during that period would create unnecessary, harmful uncertainty. For these reasons, the Commission finds good cause to waive both the 5-day pre-

[12] The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants ''shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations.'' *See* Section IX, Market Access, of the Nasdaq UTP Plan.

[13] We note that this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

[14] This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of an NMS plan.

[15] Order Entry ECNs are not subject to inbound automatic executions in SuperSOES. However, as NASD members, Order Entry ECNs are subject to NASD Rules and the enforcement and disciplinary powers granted therein. As non-members, UTP Exchanges are not subject to the same regulatory infrastructure.

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

filing requirement and the 30-day operative date.[19]

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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–71 and should be submitted by June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–14303 Filed 6–6–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46005; File No. SR–OCC–2001–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Access to The Option Clearing Corporation's Information and Data Systems Via Electronic Means

May 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 23, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's Rules regarding access to its information and data systems via electronic means.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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

Currently, OCC Rules support on-line data entry and data retrieval, but these provisions are limited solely to direct access via on-line terminals. OCC is in the process of developing a new clearance and settlement system to replace its existing system.[3] The new system will support internet access at a clearing member's election. The proposed rule change would add the definition of ''electronic data entry,'' which would be broken down into ''electronic data entry'' and ''electronic data retrieval,'' to Rule 101 to provide a more flexible and broader description of electronic means to communicate with clearing members.[4]

The proposed rule change would also eliminate outdated provisions that require clearing members to send representatives to access lock boxes to obtain papers and documents distributed by OCC and would clarify the manner in which clearing members exchange information with OCC. Under the proposed rule change, Rules 205 (''Submission of Items to Corporation [OCC]'') and 206 (''Retrieval of Items from Corporation [OCC]'') would require that a clearing member submit and retrieve instructions, notices, reports, data, and other items via electronic data entry or electronic data retrieval unless otherwise prescribed by OCC. Rules 205 and 206 would also provide that such electronic transmissions would constitute valid ''writings'' for purposes of applicable law. In the event unusual or unforeseen conditions prevent a clearing member from submitting or retrieving such items electronically, OCC would retain discretion to designate alternative means or to extend any applicable time cut-off times as may be deemed reasonable, practicable, and equitable under the circumstances.

The proposed rule change would amend Rule 208 (''Reports by the Corporation [OCC]'') to provide clearing members with the ability to notify OCC via facsimile or e-mail of any errors contained in reports made available by OCC.

Under the proposed rule change, a new Rule 212 (''Security Measures'') would set forth the obligations of clearing members to comply with security measures implemented by OCC, including access codes and authorization stamps. Under Rule 212, a clearing member would be bound by submissions made using a current access code or authorization stamp.

Finally, the proposed rule change would make conforming changes to Interpretations and Policies under Rules 801 (''Exercise of Options'') and 1606A (''Alternative Settlement Procedures'') to delete references to ''on-line data entry'' and to replace those references with the newly defined ''electronic data entry.'' Interpretations and Policies .01 under Rule 801 also would be amended to accurately reference amended Rule 205 relating to the extension of cut-off times in the event of unusual or unforeseen conditions.

Attached as Exhibit B to the proposed rule change is the ''Supplement to the Agreement for OCC Services for Internet Access'' proposed to be entered into between OCC and its clearing members. OCC is developing a front-end portal

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[19] 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).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] As previously reported to the Commission, OCC is developing a new clearance and settlement system known as ENCORE to replace its existing system, INTRACS. OCC's implementation strategy is to replace INTRACS on a modular basis with new development code modules replacing targeted pieces of INTRACS which will then be ''decommissioned''. Newly developed and installed code will interface with remaining portions of INTRACS until the old system is completely replaced.

[4] Under the proposal, ''electronic data entry'' would be defined as the transmission by a clearing member to OCC via electronic means of reports, notices, instructions, data, or other items. ''Electronic data retrieval'' would be defined as the retrieval by a clearing member via electronic means of reports, notices, instructions, data, and other items made available by OCC.