

no cross, is consistent with the Exchange Act and the policy underlying short sale regulation. Nasdaq believes that short selling provides the market with important benefits, such as market liquidity and pricing efficiency, and that short selling should not be restricted unnecessarily. As a result, the primary objective of short sale regulation is to prevent manipulative short selling, such as "bear raids" from driving the price of securities through successively lower price levels. Nasdaq also believes that its two opening processes, the Nasdaq Opening Cross and the Modified Opening Process, will reduce the incentive and potential effectiveness of manipulative short selling at the open by aggregating substantial trading interest and executing it in an organized, transparent fashion. After those processes are complete, the short sale bid arrow is immediately recalculated according to the first bids Nasdaq receives, making it immediately available to detect and address problematic short selling that could occur on Nasdaq. Nasdaq also notes that Nasdaq's proposed regulation of short selling is far more effective than the practice in other markets that currently trade Nasdaq securities with no price test at all.

Nasdaq will implement this change with the launch of its recently proposed modified opening process described in SR-NASD-2004-71.<sup>7</sup> In that filing, Nasdaq proposed to establish an Opening Cross for certain Nasdaq-listed stocks and to improve the opening process for all others. Under the interpretation herein, the bid arrow would be designated as an up arrow during the Opening Cross, which will be the first activity in the market at 9:30. The bid arrow would be up at the conclusion of the Opening Cross, and would change based upon the first bid change processed immediately following the Opening Cross. For Nasdaq stocks for which there is no Opening Cross, the bid arrow will be designated as an up arrow immediately at 9:30 and then will change based upon the first bids processed after 9:30.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

general, to protect investors and the public interest. Nasdaq believes the proposed rule change is consistent with the Act in that it updates Nasdaq's short sale rule to reflect the increase in after-hours and pre-opening trading and also promotes compliance with and regulation of short sale requirements.

### 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

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)<sup>9</sup> of the Act, and subparagraph (f)(1) of Rule 19b-4,<sup>10</sup> because the proposal constitutes a stated policy, practice, or interpretation with respect to meaning, administration, or enforcement of an existing NASD rule. At any time within 60 days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>11</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

<sup>11</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 6, 2004, the date Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Number SR-NASD-2004-150 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-150. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-150 and should be submitted on or before January 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SMALL BUSINESS ADMINISTRATION

### Region IV North Florida District Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) North Florida District Advisory Council located in Jacksonville, Florida, will host a public meeting at 12 p.m. e.s.t. on Wednesday, January 19, 2005 at the SBA North Florida District Office located at 7825

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

<sup>7</sup> Release No. 34-50405 (Sept. 16, 2004), 69 FR 57118 (Sept. 23, 2004) (Notice of Filing).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

Baymeadows Way, Jacksonville, FL 32256, to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than Monday, January 3, 2005, in order to be placed on the agenda.

*Contact information:* Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, 7825 Baymeadows Way; Suite 100B, Jacksonville, FL 32256, Telephone (904) 443-1900, FAX (202) 481-4188.

**Matthew K. Becker,**

*Committee Management Officer.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States- Oman Free Trade Agreement Negotiations

**AGENCIES:** Office of the United States Trade Representative; Department of Labor.

**ACTION:** Request for comments.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of a proposed free trade agreement (FTA) between the United States and Oman on U.S. employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

**DATES:** USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, February 16, 2005, to be assured of timely consideration.

**ADDRESSES:** Submissions by electronic mail: [FR0513@ustr.eop.gov](mailto:FR0513@ustr.eop.gov). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the

USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693-4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395-6120.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background Information

In accordance with section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), on November 15, 2003, the USTR notified the Congress of the President's intent to initiate FTA negotiations with Oman. Pursuant to the requirements of the Trade Act of 1974, the USTR requested the U.S. International Trade Commission (ITC) to provide advice on probable economic effects no later than February 28, 2005. In addition, USTR published a notice in the **Federal Register** soliciting views from the public on the negotiations in general, and the TPSC will hold a public hearing on January 14, 2005. The United States intends to begin negotiations with Oman in March 2005.

##### 2. Employment Impact Review

Section 2102(c)(5) of the Trade Act (19 U.S.C. 3802(c)(5)) directs the President to review the impact of future trade agreements on U.S. employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public. USTR and Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a notice in the **Federal Register** soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United

States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

##### 3. Requirements for Submissions

In order to ensure prompt and full consideration of response, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "U.S.-Oman FTA Employment Impact Review." Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters "BC-," and the file name of the public version should begin with the character "P-." The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395-6186. The USTR Reading Room is generally open to the public from 10 a.m.-12 noon and 1-4 p.m. Monday through Friday.