

the Exchange submitted Amendment No. 1 to the proposed rule change.³

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 4, 2003.⁴ The Commission received no comments on the proposed rule change. This Order approves the proposed rule change, as amended.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁵ and with the requirements of section 6(b).⁶ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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.

The Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan")⁸ and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders). The Exchange has represented that in certain circumstances it might be necessary for the autofade functionality to move one side of the quote beyond the bid/ask parameters provided for in CBOE Rule 8.7(b)(iv), and therefore, has proposed a temporary exception to this Rule. Under the proposed rule change, until January 30, 2004, if the autofade functionality widens a quote beyond that permitted by CBOE Rule 8.7(b)(iv) for 30 seconds, a responsible broker or dealer disseminating that quote will not be considered in violation of the rule. However, if a quote remains outside of

the maximum width after the 30 second time period, the responsible broker or dealer disseminating that quote will be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes.

The Commission believes that because the CBOE's autofade functionality will automate the process, it will help ensure that members comply with the Linkage Plan. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the process to ensure that members are in full compliance with this provision of the Linkage Plan.

Further, the proposed rule change will allow the Exchange to modify how quotes are handled following automatic executions. Currently, if a quote is exhausted via automatic executions, the Exchange may disseminate a size of "1" for a specified "reroute" period during which time the Exchange's Retail Automatic Execution System ("RAES") is disengaged. Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Commission believes that implementation of the autofade functionality will facilitate compliance with the Linkage Plan and will result in more efficient executions through RAES, as described above. Therefore, the Commission believes that it is appropriate, on a pilot basis, to suspend the requirements of CBOE Rule 8.7(b)(iv) to allow the autofade functionality to widen one side of a quote beyond that permitted by the Rule for 30 seconds.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-2003-08), as amended, is approved on a pilot basis, to expire January 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23547 Filed 9-15-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48466; File No. SR-NASD-2003-125]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890

September 9, 2003.

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 8, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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. On September 4, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act⁴ and Rules 19b-4(f)(1) and (3) thereunder,⁵ Nasdaq has designated this proposal as one that, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, is concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq MarketWatch and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 3, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq corrected rule text, clarified the application of Rule 19(b)(3)(A) to the proposed rule change, and clarified its description of NASD Rules 5265 and 11890.

⁴ 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

⁵ 17 CFR 240.19b-4(f)(1) and (3).

³ See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48237 (July 28, 2003), 68 FR 45869.

⁵ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's 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).

⁸ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

to clarify members' obligations under NASD Rule 4625.⁶ This proposed rule change is effective upon the Commission's receipt of Nasdaq's filing.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4614. Stabilizing Bids

(a) Market Maker Obligation/Identifier

A market maker that intends to stabilize the price of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall submit a request to Nasdaq [Market Operations] *MarketWatch* for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) and (c) No change.

(d) Submission of Request to Association

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq [Market Operations] *MarketWatch* for entry on Nasdaq of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq [Market Operations] *MarketWatch* that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq [Market Operations] *MarketWatch* that shall include:

(A) The identity of the security and its Nasdaq symbol;

(B) The contemplated effective date of the offering and the date when the offering will be priced;

(C) The date and time that an identifier should be included on Nasdaq; and

(D) A copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Association determines otherwise.

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4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq [Market Operations] *MarketWatch* only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq [Market Operations] *MarketWatch*. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) The written request for withdrawal is received by the Association one business day in advance, and is approved by the Association;

(2) The request includes a list of the securities for which withdrawal is requested; and

(3) The request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611 above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price

changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq [Market Operations] *MarketWatch* and the Market Regulation department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC rule 10, unless later notification is necessary under the specific circumstances.

(A) No change.

(B) The managing underwriter shall advise each market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq [Market Operations] *MarketWatch* and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq [Market Operations] *MarketWatch* as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq [Market Operations] *MarketWatch* as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq [Market Operations] *MarketWatch* and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a market maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq [Market Operations] *MarketWatch* of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this

⁶Nasdaq states that, with one exception, the proposed rule change is concerned solely with the administration of the self-regulatory organization, and therefore immediately effective pursuant to section 19(b)(3)(A)(iii) of the Act. The one exception to this is the addition of the words "or other transaction" to one of the examples contained in NASD Rule 4625 (the relevant example was originally contained in Rule 4625(a)(2)(D) but is now being re-designated as Rule 4625(a)(1)(G)). Nasdaq states that this particular aspect of the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and is therefore immediately effective pursuant to section 19(b)(3)(A)(i) of the Act. See Amendment No. 1, *supra*, n.3.

subparagraph shall prohibit the Association from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq [Market Operations] *MarketWatch* to obtain an excused withdrawal as required by subparagraphs (a) and (d) of this Rule.

(4) No change.

(5) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (d)(1) of this rule shall submit a request a to Nasdaq [Market Operations] *MarketWatch* and the market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(e) No change.

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4620. Voluntary Termination of Registration

(a) No change.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notified [Market Operations] *MarketWatch* of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) through (3) No change

(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not limited to:

(1) through (4) No change

(5) the timeliness with which the market maker notified [Market Operations] *MarketWatch* of the error.

(d) No change.

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4624. Penalty Bids and Syndicate Covering Transactions

(a) and (b) No change

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq by providing notice to Nasdaq [Market Operations] *MarketWatch*, which notice shall

include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on Nasdaq.

(d) No change

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4625. Obligation To Provide Information

(a) A NASD member operating in or participating in the third market, The Nasdaq Stock Market, or other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(1) Nasdaq *MarketWatch* staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq *MarketWatch* is responsible for administering or to other duties and/or obligations imposed on Nasdaq *MarketWatch* by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A) A locked or crossed market; or

(B) A trade reported by a member or ECN to the Automated Transaction Confirmation Service ("ACT"); or

(C) Trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to NASD Rule 4120 and IM-4120-1; or

(D) A quotation that appears not to be reasonably related to the prevailing market; or

(E) *A clearly erroneous transaction, pursuant to NASD Rule 11890; or*

(F) *A request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 5106 and 6350; or*

(G) *The resolution of a trade-through complaint, or other transaction, pursuant to NASD Rules 5262, 5265, and 11890; or*

(H) *A request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.*

(2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan

(e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A)[a clearly erroneous transaction, pursuant to NASD Rule 11890;

(B)] a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612; or

[(C) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 4730, 5106 and 6350;

(D) the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890;

(E)](B) an ACT input error; or

[(F)](C) an equipment failure [; or

(G) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624].

(b) No change

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5106. Requirements Applicable to Market Makers

(a) No change

(b) Market Maker Obligations.

The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.

(1) Registration.

(A) through (C) No change.

(D) A Service market maker may become registered in a newly qualified security by telephoning [Market Operations] *MarketWatch*. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.

(E) and (F) No change.

(2) No change

(3) Character of Quotations

(A) through (C) No change

(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact [Market Operations] *MarketWatch* to request the withdrawal of its quotations.

(E) through (H) No change.

(4) Withdrawal of Quotations

(A) A Service market maker that wishes to withdraw its quotations in a

qualified security shall contact [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by [Market Operations] *MarketWatch* only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.

(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by [Market Operations] *MarketWatch*. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation™ units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.

(C) No change.

(5) No change.

(6) Stabilizing Bids

(A) and (B) No change.

(C) Notice to the Association

(i) A Service market maker that wishes to enter a stabilizing bid shall so notify [Market Operations] *MarketWatch* in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.

(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.

(iii) A service market maker that has provided the written notice prescribed above shall also contact [Market Operations] *MarketWatch* for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.

(D) and (E) No change.

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6350. Withdrawal of Quotations

(a) A CQS market maker that wishes to withdraw quotations in a reported security shall contact Nasdaq [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to withdrawing its quotations.

(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq [Market Operations] *MarketWatch*. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120.

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11890. Clearly Erroneous Transactions

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) No change.

(2) Procedures for Reviewing Transactions

(A) Any member, member of a UTP Exchange, or person associated with any such member that seeks to have a transaction reviewed pursuant to

paragraph (a)(1) hereof shall submit a written complaint to Nasdaq [Market Operations] *MarketWatch* in accordance with the following time parameters:

(i) For transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10 a.m., Eastern Time, complaints must be received by Nasdaq by 10:30 a.m., Eastern Time; and

(ii) For transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10 a.m., Eastern Time, complaints must be received by Nasdaq within thirty minutes.

(B) through (E) No change.

(b) through (d) 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 the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq *MarketWatch* and to clarify members' obligations under NASD Rule 4625.

NASD Rules 4614, 4619, 4620, 4624, 5106, 6350, and 11890 all identify Market Operations as the Nasdaq department responsible for administration of the respective rules. Nasdaq has determined that, in order to ensure continued effective administration of these rules, it would be appropriate and desirable to transfer this responsibility to Nasdaq's *MarketWatch* department. As such, the proposed rule change to NASD Rules 4614, 4619, 4620, 4624, 5106, 6350, and 11890 would merely replace references to Market Operations with references to *MarketWatch*.

NASD Rule 4625 authorizes Nasdaq to seek certain information from members and provides specific examples of the types of information that Market Operations and *MarketWatch*,

respectively, may seek. In light of the shift of certain regulatory responsibilities from Market Operations to *MarketWatch*, as described in the preceding paragraph, the examples contained in NASD Rule 4625 need to be realigned accordingly, since certain types of information that previously would likely have been sought by Market Operations, would now be most likely needed by *MarketWatch* as it exercises its newly-acquired authority (which would shift to it from Market Operations) under the proposed rule change.

Furthermore, Nasdaq wishes to clarify the language in one of the examples contained in NASD Rule 4625. The example currently contained in paragraph (a)(2)(D) of NASD Rule 4625⁷, refers to information relating to "the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890." NASD Rule 5262 focuses on InterMarket trade-through complaints. Rules 5265 and 11890, however, make no reference to trade-through complaints but rather focus on the authority to adjust other transactions. As such, a clarification is desirable in order to identify specifically Nasdaq's authority to seek, and members' obligation to provide, information relating to "the resolution of a trade-through complaint, *or other transaction*, pursuant to NASD Rules 5262, 5265, and 11890."

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ including sections 15A(b)(2) and (6) of the Act,⁹ which require, respectively, that (i) NASD be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD and (ii) the rules of the NASD 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. Nasdaq believes that, at this time, *MarketWatch*, rather than Market Operations, is the most appropriate department to handle certain regulatory responsibilities referenced above. As such, the organizational realignment and the corresponding proposed rule changes are consistent with the requirements of the Act. Furthermore, the proposed clarifying change in the language of the example currently contained in NASD Rule 4625(a)(2)(D) will make that rule's meaning more transparent, thereby helping advance the investor protection and public interest objectives of the Act.

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

Nasdaq does not believe that the proposed rule change, as amended, 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 foregoing rule change has become effective pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act¹⁰ and Rules 19b-4(f)(1) and (3) thereunder¹¹ in that it, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, concerns solely with the administration of the self-regulatory organization.

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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 4, 2003, when Amendment No. 1 was filed.¹²

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. 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 the NASD. All submissions should refer to file number SR-NASD-2003-125 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-23550 Filed 9-15-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48468; File No. SR-NASD-2003-113]

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. To Codify Nasdaq's Existing Authority To Implement a "Quote-Only Period" Before the Start of Trading in Initial Public Offerings on Nasdaq

September 10, 2003.

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 July 21, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange

⁷ Under the proposed rule change, this example would be moved to paragraph (a)(1)(G) of NASD Rule 4625.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(2) and (6).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

¹¹ 17 CFR 240.19b-4(f)(1) and (3).

¹² See n.3, *supra*.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.