

members of the Committee and convene a meeting to make these decisions. It is also not practicable to expect these members to monitor the situation when they are trying to conduct a business on the floor that requires their attention. Intra-day meetings are not only impracticable to convene but would distract these members from the conduct of their business on the floor.

Consequently, the EFPC has determined to delegate its authority under CBOE Rule 6.8 to the Chairman of the EFPC, or to the Chairman's designee, to decrease the eligible order size for RAES in unusual market conditions provided that the Chairman or his designee believes the action is warranted and provided the decision is made for no more than one trading day (as is currently the case for the Chairman increasing the order size eligibility for RAES). As proposed, to the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to decrease the RAES eligible order size for that subsequent day. Further, any decisions made by the Chairman or his designee to decrease the RAES eligible order size for a particular option class for consecutive days will be reviewed by the FPC at its next regularly scheduled meeting. After reviewing these decisions the FPC can provide guidance to the Chairman or his designee about the use of this authority if they feel it is appropriate.

2. Statutory Basis

By allowing the Chairman of the appropriate FPC or his designee to make decisions to decrease the eligible order size for RAES, the Exchange can sustain the operation of RAES during unusual market conditions in an efficient manner. The filing, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁴ 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 a national market system, and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition 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, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR-CBOE-00-10 and should be submitted by June 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42869; File No. SR-NASD-00-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade-Reporting of Average-Price Trades in Nasdaq-Listed Securities

May 31, 2000.

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 May 17, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned 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. On May 17, 2000, Nasdaq submitted Amendment No. 1 to the proposed rule change.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

Nasdaq proposes to require all transaction in Nasdaq-listed securities that are done on a weighted average basis or effected based on other special-pricing formulae, to be reported with a special .W indicator. Proposed deletions are in brackets.

* * * * *

Rule 4632. Transaction Reporting

(a)(1)-(5) No Change.

(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq originally filed the proposal of May 11, 2000, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). On May 17, 2000, Nasdaq submitted a letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). Because Nasdaq amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal re-filed as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

(7)–(8) No Change.

(b)–(f) No Change.

Rule 4642. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.

(7)–(8) No Change.

(b)–(f) No Change.

* * * * *

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

Recently, the NASD filed SR–NASD–00–21 with the Commission to amend Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed in the over-the-counter market (*i.e.*, in the “Third Market”) and that are executed on a weighted average or other special-pricing basis to be reported with a .W indicator.⁴ The purpose of SR–NASD–00–21 is to increase pricing transparency and eliminate investor confusion that could occur if investors see prints go across the tape that are unrelated to the current market. Faced with similar concerns for Nasdaq-listed securities, Nasdaq proposes in this filing to amend NASD Rules 4632 and 4642, to require all transactions (not just agency crosses) in Nasdaq-listed securities that are executed on a weighted-average or other special-pricing formulae basis to be reported with a .W trade modifier.

By way of background, prior to proposing the amendments to NASD Rule 6420 for the listed environment, the NASD learned that a sizable number of trades in exchange-listed securities effected in the Third Market after hours are volume-weighted/special-pricing formula transactions, which are effected

on a principal or riskless principal basis. These volume-weighted/special-pricing formula trades are often effected at a price unrelated to the close—or if effected during the trading day, the last sale—on the primary exchange. These trades are then reported to the NASD and the consolidated tape without a special modifier to denote they are being effected at a price *unrelated* to the last sale on the primary exchange. Because these trades are not effected as agency crosses and thus not subject to the .W reporting requirement in NASD Rule 6420(a)(6), they are reported to the NASD and the consolidated tape without a modifier. Consequently, these weighted average/special-pricing formula trades affect the reporting to the media and vendors of the last sale in the exchange-listed security. The reporting of trades on a weighted average/special-pricing formulae basis without a modifier creates investor confusion regarding the last sale price. Moreover, there exists the potential for disorderly markets when a security opens the next day on the primary exchange at a price that, although related to the last sale on the primary exchange, is unrelated to the last reported price that was effected on a weighted average basis on the previous day prior to 6:30 p.m. Eastern Time.⁵ In response to these concerns, the NASD recently proposed to amend NASD Rule 6420 to require a .W trade modifier for all weighted average price trades, not just those effected on an agency-cross basis. This proposal (SR–NASD–00–21) currently is pending before the Commission.

Nasdaq believes that many of the same concerns associated with last sale reporting of weighted average or special-priced formula trades that exist for listed securities also exist for Nasdaq securities. In an effort to reduce investor confusion by increasing pricing transparency for last sale data, Nasdaq proposes to amend NASD Rules 4632 and 4642 to require the .W modifier for all weighted average and special-pricing formula trades that occur in Nasdaq-listed securities.

Specifically, NASD Rules 4632(a)(6) and 4642(a)(6) require members to append a .W to a trade report when effecting transactions occurring at prices based on average-weighting or other special-pricing formulae in the security. When adopted, the scope of Rules 4632(a)(6) and 4642(a)(6) was limited to agency cross trades effected on a weighted average or other special-pricing formulae basis because a majority of the trades, at the time, were

being effected on an agency-cross basis. Since 1992, the market has changed in many ways. In particular, Nasdaq recently amended a number of its rules to allow certain systems, including the Automated Confirmation and Transaction System (“ACT”), to stay open until 6:30 p.m. to facilitate the reporting of trades executed after-hours.⁶ As part of this initiative, Nasdaq amended Rules 4632 and 4642 to require members to report within 90 seconds transactions effected between 9:30 a.m. and 6:30 p.m. Prior to this change, the 90 second trade-reporting requirement applied to transactions effected between 9:30 a.m. and 5:15 p.m. and transaction effected between 5:15 and 6:30 p.m. were not subject to 90 second trade reporting requirements. Rather, such transactions were reported the next day (*i.e.*, T+1) on an “as of” basis.

One effect of the after-hours rule changes has been to subject transactions that previously were reported on an “as of” basis, T+1—because they were effected between 5:15 p.m. and 6:30—to 90 second trade reporting requirements. Similar to the listed environment, Nasdaq recently has learned that a sizable number of trades effected during the 5:15 p.m. and 6:30 p.m. time period are volume-weighted or special-pricing formula transactions, which are effected on a principal or riskless principal basis. These trades are often effected at a price unrelated to the close or if effected during the trading day, the last sale on Nasdaq. Because these trades are not executed as agency crosses, they are not subject to the .W reporting requirements in Rules 4632(a)(6) and 4642(a)(6). Thus, these trades are reported to the tape without a modifier. Nasdaq believes that there is the potential for investor confusion because these trades are often effected at a price unrelated to the current market, yet investors have no way of knowing this from the media report. Thus, investors may believe that the trade they are seeing represents the current market, when in actuality, the trade represents a price determined by a special formula. As a short-term method of alleviating confusion before this rule change could be proposed, the Nasdaq requested that NASD members report these weighted average trades effected between 4:00 and 6:30 p.m., on an “as of” basis, T+1.

In light of the foregoing efforts, the Nasdaq proposes to amend NASD Rules 4632 and 4642 to require all

⁴ See SR–NASD–00–21.

⁵ All times mentioned in this proposal are Eastern Standard times.

⁶ See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (order approving File No. SR–NASD–99–57 on a pilot basis).

transactions, not just agency crosses, in Nasdaq-listed securities that are based on a weighted average or other special-pricing formulae, to be reported with the .W modifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)⁷ of the Act. Among other things, Section 15A(b)(6) requires that the rules of a 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. In addition, the Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii)⁸ of the Act by ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Nasdaq believes that reporting transactions in exchange-listed securities that are marked with a special indicator to identify their unique pricing formulae is appropriate for regulatory purposes and reduces investor confusion with regard to these transactions.

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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 17, 2000, the date on

which it was filed and, since the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,⁹ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 No. SR-NASD-00-28 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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⁹ The Commission notes that Nasdaq gave the Commission notice of its intent to file the proposed rule change through its original filing of the proposal pursuant to Section 19(b)(2) of the Act on May 11, 2000.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42876; File No. SR-NASD-99-69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Certain Listing Standards of The Nasdaq Stock Market, Inc.

May 31, 2000.

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 November 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned 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 Nasdaq. The Association submitted Amendments No. 1³ and No. 2⁴ to the proposed rule change on April 10, 2000, and April 27, 2000, respectively. 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 Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarified that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

⁴ See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 ("Amendment No. 2"). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).