

of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the \$1 Strike Pilot Program, which expires on August 5, 2004.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the \$1 Strike Pilot Program to continue without interruption through June 5, 2005.<sup>9</sup> For this reason, the Commission designates that the proposal become operative immediately.<sup>10</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> If the ISE proposes to (1) extend the \$1 Strike Pilot Program beyond June 5, 2005; (2) expand the number of options eligible for inclusion in the \$1 Strike Pilot Program; or (3) seek permanent approval of the \$1 Strike Pilot Program, it must submit a pilot program report to the Commission along with the filing of such proposal. The pilot program report must cover the entire time the \$1 Strike Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the \$1 Strike Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the \$1 Strike Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the ISE selected for the \$1 Strike Pilot Program; (4) an assessment of the impact of the \$1 Strike Pilot Program on the capacity of the ISE's, OPRA's, and vendors' automated systems; (5) any

At any time within 60 days of the filing of such 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 change 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 Number SR-ISE-2004-26 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-ISE-2004-26. 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

capacity problems or other problems that arose during the operation of the \$1 Strike Pilot Program and how the ISE addressed them; (6) any complaints that the ISE received during the operation of the \$1 Strike Pilot Program and how the ISE addressed them; and (7) any additional information that would help to assess the operation of the \$1 Strike Pilot Program. The Commission expects the ISE to submit a proposed rule change at least 60 days before the expiration of the \$1 Strike Pilot Program in the event the ISE wishes to extend, expand, or seek permanent approval of the \$1 Strike Pilot Program. The Commission notes that the submission of a satisfactory pilot program report along with a proposed rule change to extend, expand, or permanently approve the \$1 Strike Pilot Program is a condition precedent to the future operation of the ISE's \$1 Strike Pilot Program.

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2004-26 and should be submitted on or before August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50074; File No. SR-NASD-2004-076]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the National Association of Securities Dealers, Inc. To Rename Certain of Nasdaq's Systems and To Make Other Technical Corrections

July 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 2, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made various technical and clarifying amendments to the proposed rule text.

<sup>6</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated July 21, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made additional clarifying amendments to the proposed rule text.

have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> as one concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission.

Nasdaq filed Amendment No. 1 to the proposed rule change on July 2, 2004.<sup>5</sup> Nasdaq filed Amendment No. 2 to the proposed rule change on July 23, 2004.<sup>6</sup> 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**

Nasdaq proposes to rename certain of its systems and to make other technical corrections to certain of its rules. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, at the Commission, and on the Commission's Web site, <http://www.sec.gov>.

### **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**

Nasdaq is generally discontinuing the use of the terms "SuperMontage," "Nasdaq National Market Execution System," "NNMS," and "ACT" in its rules and replacing them in many instances with the term "Nasdaq Market Center." The proposed rule change also makes several technical corrections to punctuation and paragraph designations and other conforming changes. These changes include, in NASD Rule 4701, a consolidation of former paragraphs (r), (d), (x) and (ee) into a single paragraph (r) with four subsections setting forth the four functionalities that the newly-

named Nasdaq Market Center comprises: (1) An order execution service as already described in paragraph (r); (2) a trade reporting service formerly designated by the term "Automated Confirmation Transaction" Service or "ACT" and described in paragraph (d) and other rules; (3) for Nasdaq-listed securities, a quotation montage formerly designated by the term "Nasdaq Quotation Montage" and described in paragraph (x); and (4) for Nasdaq-listed securities, an order display service formerly designated by the term "Nasdaq Order Display Facility" and described in paragraph (ee).<sup>7</sup> In tandem with these changes, Nasdaq is also revising the terms by which its rules refer to certain participants in the former NNMS. For example, the former term "NNMS Market Maker" will be replaced by "Nasdaq Market Maker." The former term "NNMS ECN" will be replaced by "Nasdaq ECN." Nasdaq did not change certain proper names, including the names of preexisting agreements and equipment; rather, it will make corrections to the Rules as appropriate once the agreements and equipment are renamed.

In addition, Nasdaq is making technical corrections to NASD Rules 5210 and 5220. On March 2, 2004, the Commission approved Nasdaq's proposal to transition the trading of exchange-listed securities onto the SuperMontage trading platform from the Computer Assisted Execution System. The text of the SuperMontage rules approved as part of that proposal, as published in Exhibit A to Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004) ("Exhibit A"), contained minor technical errors. Exhibit A did not accurately reflect the text of NASD Rules 5210 and 5220 that had previously been approved by the Commission and were in effect.

Specifically, Exhibit A added a definition of the term "CAES" as new NASD Rule 5210(i) when NASD Rule 5210(i) already was in effect. Prior to the filing of SR-NASD-2003-149, NASD Rule 5210(i) set forth the definition of the term "Third Participating Market Center Trade-Through." Therefore, Nasdaq is re-establishing the definition of the term "Third Participating Market

Center Trade-Through" as NASD Rule 5210(i) and re-lettering the definition of CAES from NASD Rule 5210(i) to NASD Rule 5210(j).

Similarly, NASD Rule 5220(c) is added as a new provision, re-lettering then-existing paragraphs (c) through (g) as (d) through (h). Exhibit A inadvertently failed to identify and re-letter two additional paragraphs—paragraphs (h) and (i)—that the Commission had already approved in connection with SR-NASD-1999-075.<sup>8</sup> Therefore, Nasdaq is re-establishing the text of those provisions as NASD Rule 5220(i) and (j).

According to Nasdaq, nothing in the proposal to re-name Nasdaq's systems or to make other technical corrections alters the current operation of those systems or the rights and obligations of those using them. As such, the proposed rule change is solely administrative, technical, conforming and non-substantive in nature.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,<sup>9</sup> in general, and with section 15A(b)(6) of the Act,<sup>10</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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. Clarifying the rules helps market participants.

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

Nasdaq does not believe that the proposed rule change will impose 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*

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**

The foregoing proposal has become effective pursuant to section

<sup>7</sup> The description of the proposed rule change has been supplemented pursuant to a telephone conversation between Thomas Moran, Office of General Counsel, Nasdaq and Ira Brandriss, Assistant Director, Division, Commission, on July 13, 2004. As further discussed below, Nasdaq represents that none of the proposed changes alters the operation of the systems described or the rights and obligations of those using them.

<sup>8</sup> See Exchange Act Release No. 42536 (March 16, 2000), 69 FR 15401 (March 22, 2000).

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(3)<sup>12</sup> thereunder as one concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such 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.<sup>13</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 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 Number SR-NASD-2004-076 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-2004-076. 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. 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-2004-76 and should be submitted on or before August 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50084; File No. SR-NASD-2004-103]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc., To Modify the Methodology for Applying Nasdaq's Pricing Schedule to Affiliated Members

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 21, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), dated July 19, 2004, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on July 21, 2004, the date Nasdaq filed Amendment No. 1. See Rule 19b-4(f)(2), 17 CFR 240.19b-4(f)(2).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

proposal effective upon filing with the Commission. 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

Nasdaq proposes to modify its fee schedule by allowing the aggregation of activity of affiliated members, provided that the members have complete identity of common ownership. Nasdaq plans to implement the proposed rule change on August 1, 2004.

The text of the proposed rule change appears below.<sup>6</sup> Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 7020. [Reserved] *Aggregation of Activity of Affiliated Members*

(a) *For purposes of applying any provision of Rules 7010(c), (d), (f), (g), (i), or (u) that reflects a charge assessed, or credit provided, by Nasdaq, a member may request that Nasdaq aggregate its activity with the activity of its affiliates. A member requesting aggregation of affiliate activity shall be required to certify to Nasdaq the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform Nasdaq immediately of any event that causes an entity to cease to be an affiliate. In addition, Nasdaq reserves the right to request information to verify the affiliate status of an entity.*

(b) *For purposes of applying any provision of Rules 7010(c), (d), (f), (g), (i), or (u) that reflects a charge assessed, or credit provided, by Nasdaq, references to an entity (including references to a "member," a "participant," or a "Nasdaq Quoting Market Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.*

(c) *For purposes of this Rule 7020, the terms set forth below shall have the following meanings:*

(1) *An "affiliate" of a member shall mean any wholly owned subsidiary, parent, or sister of the member that is also a member.*

(2) *A "wholly owned subsidiary" shall mean a subsidiary of a member, 100% of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly*

<sup>6</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at [www.nasdaq.com](http://www.nasdaq.com).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 C.F.R. 240.19b-4(f)(3).

<sup>13</sup> For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on July 23, 2004, the date Nasdaq submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).