

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51837; File No. SR-NASD-2005-062]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Modify the Text of NASD Trade Reporting Rules to Reflect the Implementation of SR-NASD-2003-159

June 13, 2005.

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 12, 2005, 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 June 9, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq has designated this proposal as concerned solely with the administration of a self-regulatory organization, pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(3) thereunder,⁵ which renders the proposed rule change effective upon 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 Substance of the Proposed Rule Change

Nasdaq is modifying the text of trade reporting rules in order to reflect the implementation of provisions of SR-NASD-2003-159⁶ that had a delayed implementation date.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made minor technical changes to the proposed rule change. The effective date of the original proposed rule change is May 12, 2005, and the effective date of Amendment No. 1 is June 9, 2005. 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 the period to commence on June 9, 2005, the date on which Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(3).

⁶ See Securities Exchange Act Release Nos. 49404 (March 11, 2004), 69 FR 12727 (March 17, 2004) (SR-NASD-2003-159) (proposing release) and 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004) (SR-NASD-2003-159) (approval order).

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁷

4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

(a)-(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)-(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include [:

(A) A] an order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center shall be in Eastern Time.]

(d)-(g) No change.

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[IM-4632-2. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (“SEC”) approved a proposed rule change filed by the Association (SR-NASD-2003-159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or “ACT”). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

⁷ Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

4640. Reporting Transactions in Nasdaq SmallCapSM Market Securities

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4642. Transaction Reporting

(a)-(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)-(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include [:

(A) A] an order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(d)-(g) No change.

[IM-4642. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (“SEC”) approved a proposed rule change filed by the Association (SR-NASD-2003-159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or “ACT”). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective

date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

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4650. Reporting Transactions in Nasdaq Convertible Debt Securities

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4652. Transaction Reporting

(a)-(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)-(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be include on the report* [if the trade is reported more than 90 seconds after execution].

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include:

(A) A an order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(d)-(g) No change.

[IM-4652. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission ("SEC") approved a proposed rule change filed by the Association (SR-NASD-2003-159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or "ACT"). In response to comments from the Association's Small

Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

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5400. Nasdaq Stock Market and Alternative Display Facility Trade Reporting

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5430. Transaction Reporting

(a) When and How Transactions are Reported

(1)-(3) No change.

(4) Transaction Reporting to the Nasdaq Market Center Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours.

Transactions not reported within 90 seconds shall *also* be designated as .T trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].^[1]

(B) Last sale reports of transactions in designated securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall *also* be designated as .T trades[, and include the time of execution]. Transactions not reported before 6:30 p.m. shall be reported on an "as of" basis the following day between 8 a.m. and 6 p.m.

(C) Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time shall be reported between 8 a.m. and 9:30 a.m. Eastern Time on trade date as ".T" trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30

p.m. as .T trades[, and include the time of execution].^[2]

(D) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time and be designated "as/of" trades[and include the time of execution].

(5)-(6) No change.

(7) All members shall append the .W trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae. [Members reporting transactions to the Nasdaq Market Center with the .W modifier shall also include the time of execution on the transaction report.]

(8)-(12) No change.

(13) To identify pre-opening and after-hours trades reported late, Nasdaq will convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.^[3]

(b) No change.

^[1] Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an "as/of basis," and include the time of execution, last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

^[2] Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an "as/of basis" last sale reports of transactions in designated securities executed between midnight and 8 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

^[3] Nasdaq expects to implement use of the .ST modifier for Nasdaq listed securities in the fourth quarter of 2004, and will issue a notice of the exact implementation date.]

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6100. Trade Reporting Service

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6130. Trade Report Input

(a)-(c) No change.

(d) Trade Information To Be Input

Each report to the Nasdaq Market Center shall contain the following information:

(1)-(3) No change.

(4) *The time of [E]execution expressed in hours, minutes, and seconds based*

on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report [time for any transaction in Nasdaq or CQS securities not reported within 90 seconds of execution];

(5)–(12) No change.

(13) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include[

(A) A] an order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

[(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the report to the Nasdaq Market Center. All times reported to the Nasdaq Market Center system shall be in Eastern Time.]

(e)–(f) No change.

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6400. Reporting Transactions in Listed Securities

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6420. Transaction Reporting

(a) When and How Transactions are Reported

(1)(A) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late[, and such trade reports must include the time of execution].

(B) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as “.T” trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades[, and include the time of execution on the trade report]. Transactions not reported by 6:30 p.m. shall be reported on an “as of” basis the

following day between 8 a.m. and 6:30 p.m. Eastern Time.

(2)(A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late[, and include the time of execution].

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as “.T” trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades[, and include the time of execution on the trade report]. Transactions not reported by 6:30 p.m. shall be reported on an “as of” basis the following day between 8 a.m. and 6:30 p.m.

(3)–(5) No change.

(6) All members shall report to Nasdaq using the .W modifier transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market. [Members shall also include the time of execution on the transaction report.]

(7) No change.

(8) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.¹

(9) No change.

(10) To identify pre-opening and after-hours trades reported late, Nasdaq shall convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.[²]

(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) The time of execution *expressed in hours, minutes, and seconds based upon Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report* [if the trade is reported more than 90 seconds after execution].

(d)–(f) No change.

¹ Implementation of the .PRP modifier for listed securities is delayed until *June 6, 2005*. [such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

[² Implementation of the .ST modifier for listed securities is delayed until such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

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[IM-6420-2. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (“SEC”) approved a proposed rule change filed by the Association (SR-NASD-2003-159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or “ACT”). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 5, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at

a time closer to the actual effective date of the obligation.]

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6600. Over-the-Counter Equity Securities

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6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit to the Nasdaq Market Center last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late[and include the time of execution].

(2) Non-Market Makers shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Operations Department if the Nasdaq Market Center is unavailable due to system or transmission failure, last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4 p.m. Transactions not reported within 90 seconds after execution shall be designated as late[and include the time of execution].

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in OTC Equity Securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be transmitted to the Nasdaq Market Center within 90 seconds after execution and shall be designated as “.T” trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades[, and include the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].^[1]

(B) Last sale reports of transactions in OTC Equity Securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be transmitted to the Nasdaq Market Center within 90 seconds after execution; trades executed and reported after 4 p.m. Eastern Time shall be designated as “.T” to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades[and include the time of execution on the trade report]. Transactions not reported before 6:30 p.m. shall be reported on an “as of” basis the following day between 8 a.m. and 6:30 p.m.

(C) Last sale reports of transactions in OTC Equity Securities executed outside

the hours of 8 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depositary Receipts (ADRs), Canadian issues, or domestic OTC Equity Securities that are executed between midnight and 8 a.m. Eastern Time shall be transmitted to the Nasdaq Market Center between 8 a.m. and 9:30 a.m. Eastern Time on trade date[, and be designated as “.T” trades to denote their execution outside normal market hours[, and be accompanied by the time of execution]. Transactions not reported before 9:30 a.m. shall be reported after 4 p.m. and before 6:30 p.m. as .T trades[, and include the time of execution].^[2] The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic OTC Equity Securities that are executed between 6:30 p.m. and midnight Eastern Time shall be transmitted to the Nasdaq Market Center on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time[, and be designated “as/of” trades to denote their execution on a prior day[, and be accompanied by the time of execution]. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted to the Nasdaq Market Center on T+1 regardless of time of execution.^[3] Such reports shall be made between 8 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(C)(ii) above.

(4)–(7) No change.

(8) All members shall append the .W trade report modifier to reports of Stop Stock Transactions, as such term is defined in Rule 6610, and include the time at which the member and the other party agreed to the Stop Stock Price, as such term is defined in Rule 6610, in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.^[4]²

(9) To identify late pre-opening and after-hours trades reported late, Nasdaq will convert the .T modifier to .ST for any report submitted to ACT more than 90 seconds after execution.^[5]

(b) No change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1)–(4) No change.

(5) *The time of execution expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association’s rules requires that a different time must be included on the report.*

(d)–(f) No change.

^[1] Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an “as/of basis” last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

^[2] Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an “as/of basis” last sale reports of transactions in designated securities executed between midnight and 8 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

^[3] Member firms that have the operational capability to report transactions in foreign securities (excluding ADRs and Canadian issues) within 90 seconds of execution, between the hours of 8 a.m. and 5:15 p.m. Eastern time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed by subparagraph (3)(C)(ii)(c).

^[4] Use of the .W modifier for Stop Stock Transactions for OTC Equity Securities is delayed until the necessary system changes can be made to accommodate the modifier. Nasdaq [expects these system changes to be completed in the fourth quarter of 2004, and] will issue a notice of the exact implementation date.

^[5] Nasdaq expects to implement use of the .ST modifier for Nasdaq listed securities in the fourth quarter of 2004, and will issue a notice of the exact implementation date.] [IM–6620. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center

On April 19, 2004, the Securities and Exchange Commission (“SEC”) approved a proposed rule change filed by the Association (SR–NASD–2003–159) requiring members to include the time of execution on all reports

submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or "ACT"). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.

Until April 25, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

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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

In April 2004, the Commission approved a proposed rule change that contained numerous modifications to the trade reporting rules for the Nasdaq Market Center.⁸ The original version of SR-NASD-2003-159 contained rule language that would have immediately required firms to include the time of execution on all trade reports submitted to Nasdaq, rather than in the handful of special circumstances previously required by the rules. In response to comments from the NASD's Small Firm Advisory Board, however, Nasdaq amended the filing to delay implementation of this generalized requirement until April 25, 2005.

⁸ See Securities Exchange Act Release Nos. 49404 (March 11, 2004), 69 FR 12727 (March 17, 2004) (SR-NASD-2003-159) (proposing release) and 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004) (SR-NASD-2003-159) (approval order).

Accordingly, the amended filing approved by the Commission contained Interpretive Material appended to each trade reporting rule that informed firms of the delayed effective date and stated Nasdaq's intention to avoid confusion by maintaining the trade reporting rule language regarding time of execution in its current state until the time of implementation, at which point Nasdaq would submit an additional implementing filing.

In accordance with the full implementation of the reporting obligation approved by the Commission in SR-NASD-2003-159, Nasdaq now proposes to remove the Interpretive Material and to replace rule language reflecting an obligation to report time of execution in specified circumstances with clear language reflecting an obligation to do so in all circumstances.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁹ in general, and with Section 15A(b)(6) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaging in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq believes the proposed rule change will improve the regulation of the Nasdaq market by increasing the information made available to NASD's automated surveillance systems.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(3) of Rule 19b-4

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

thereunder.¹² 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 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. Please include File Number SR-NASD-2005-062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-NASD-2005-062. 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 Room. 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

¹² 17 CFR 240.19b-4(f)(3).

Number SR–NASD–2005–062 and should be submitted on or before July 12, 2005.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3192 Filed 6–20–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51851; File No. SR–NASD–2005–060]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Create the ModelView Entitlement

June 14, 2005.

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 10, 2005, 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. 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 modify NASD Rule 7010(q) to establish the ModelView entitlement, an historical data product containing delayed, aggregated information about displayed and reserve-size orders in Nasdaq securities. The text of the proposed rule change is below. Proposed new language is *italicized*.³

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7010. System Services

- (a)–(p) No change
- (q) Nasdaq TotalView
- (1)–(4) No change
- (5) *Historical TotalView*

Information—ModelView

Nasdaq will make historical TotalView information, under the

ModelView entitlement package, available via NasdaqTrader.com. ModelView shall contain historical TotalView information regarding aggregate displayed and reserve liquidity at each price level in the Nasdaq Market Center. ModelView shall be available for a subscription fee of \$2,000 per month.

(r)–(v) 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

Nasdaq is proposing to create ModelView, an historical data product designed to provide more comprehensive historical information regarding the data disseminated via the Nasdaq TotalView data. ModelView is designed to facilitate more efficient trading activity in the Nasdaq Market Center in an environment where trading and order-routing become increasingly automated, and broker-dealers, institutional traders and technology providers are constantly seeking to improve the quality of information upon which trading and order-routing decisions are made. Firms are frequently turning to algorithms and other computer-based means by which to execute proprietary trading strategies and process customer order flow. As a result, the information used to create these automated trading models determines trading efficacy. Incremental data that could improve the execution quality of these models is considered valuable.

To respond to this demand, Nasdaq proposes to establish ModelView, a new near-historical product derived from TotalView data, that Nasdaq believes would provide greater insight than ever before into the liquidity typically available in the Nasdaq Market Center. Specifically, ModelView would provide the aggregate amount of both displayed

and reserve size liquidity in the Nasdaq Market Center at each price level. With this information, Nasdaq believes developers of automated trading and order-routing models will improve their Nasdaq trading efficiency, and the providers of liquidity to the Nasdaq Market Center should find greater fill rates and execution quality.

Nasdaq has designed ModelView to protect the anonymity of the trading strategies of Nasdaq Market Center participants while improving the execution quality of their orders. ModelView will be a near-historical product only. No information will be available regarding Nasdaq Market Center liquidity until T+10 (e.g., information about a day’s liquidity will not be available until ten business days later). In addition, by providing aggregate liquidity information ModelView will not contain explicit or implicit information regarding the identity of market participants trading in Nasdaq at the relevant time. With the integration of Brut facility liquidity into the Nasdaq Market Center, there is significant non-attributed liquidity in the Nasdaq Market Center; thus, Nasdaq believes ModelView will preserve the anonymity of information presented in aggregate form.

Nasdaq will offer ModelView on a subscription basis via secure File Transfer Protocol over NasdaqTrader.com. ModelView will be available for \$2,000 without any limitation on distribution of the data either internally or externally. This pricing is consistent with the general pricing structure of Nasdaq’s proposed Distributor Fee.⁴

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(B)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable charges among the persons distributing and purchasing this information. Nasdaq believes that this proposed rule change will encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefiting the investing public.

⁴ See Securities Exchange Act Release No. 51598 (April 21, 2005), 70 FR 22162 (April 28, 2005) (Notice of Filing of SR–NASD–2004–185).

⁵ 15 U.S.C. 78o–3.

⁶ 15 U.S.C. 78o–3(b)(5).

¹³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The proposed changes are marked from NASD Rule 7010 as it appears in the NASD Manual available at <http://www.nasd.com>.