

II. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ in that it is 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.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amex filed Amendment No. 2 solely for the purpose of incorporating generic listing standards pursuant to Rule 19b-4(e)¹² for YUPS. The generic listing standards proposed in Amendment No. 2 were previously noticed in the separately proposed Single TIR proposal,¹³ and incorporated by reference in the YUPS notice.¹⁴ Amex has recently withdrawn the Single TIR proposal. In order to retain the generic listing standards for the YUPS product, Amex submitted Amendment No. 2 to this proposed rule change, to incorporate those standards as part of this proposed rule change. Because the generic listing standards proposed in Amendment No. 2 were already published in the **Federal Register** as part of the Single TIR proposal and because no comments were received on the Single TIR proposal, the Commission finds good cause for accelerating approval of Amendment No. 2 in order to prevent any unnecessary delay in the approval of this proposed rule change in its entirety.

⁹In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 240.19b-4(e).

¹³ See Single TIR proposal.

¹⁴ See YUPS Notice.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-Amex-2004-47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2004-47. 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 Amex. 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-Amex-2004-47 and should be submitted on or before September 15, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2004-47), as amended by Amendment No. 1, be, and it hereby is, approved, and that

¹⁵ 15 U.S.C. 78s(b)(2).

Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52303; File No. SR-NASD-2005-057]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Summary Orders in the Nasdaq Market Center

August 18, 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 April 22, 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 allow all eligible market participants in the Nasdaq Market Center to enter attributable and non-attributable Summary Orders in Nasdaq-listed and exchange-listed securities. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4700. NASDAQ MARKET CENTER—EXECUTION SERVICES

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

- (a)-(nn) No Change.
- (oo) The term "Summary" shall mean, for priced limit orders so designated,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

that if an order is marketable upon receipt by the Nasdaq Market Center, it shall be rejected and returned to the entering party. [Summary Orders may only be entered by Nasdaq Order-Delivery ECNs.]

(pp)-(uu) No Change.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by Nasdaq Market Center Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", "Day", "Good-till-Cancelled", "Auto-Ex", "Fill or Return", "Pegged", "Discretionary", "Sweep", "Total Day", "Total Good till Cancelled", or "Total Immediate or Cancel," or "Summary."

(i)-(xii) No Change.

(xiii) An order may be designated as "Summary," in which case the order shall be designated either as Day or GTC. A Summary Order that is marketable upon receipt by the Nasdaq Market Center shall be rejected and returned to the entering party. If not marketable upon receipt by the Nasdaq Market Center, it will be retained by the system. [Summary Orders may only be entered by Nasdaq Order-Delivery ECNs.]

(C)-(F) No Change.

(2) No Change.

(b)-(e) 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 allow all participants in the Nasdaq Market Center to enter attributable and non-

attributable Summary Orders, and to make Summary Orders available for exchange-listed securities. Nasdaq represents that, today, Summary Orders in essence provide a warning that the price of the order in a Nasdaq security would lock or cross the best prices then displayed in the Nasdaq Market Center by rejecting such an order back to the entering party. If the Summary Order does not lock or cross the best price, it is retained by the system for normal processing. The use of Summary Orders is currently restricted to Nasdaq Order Delivery ECNs. Approval of this proposal would give all Nasdaq Market Center participants the ability to enter such orders on either an attributable, or non-attributable, basis and make Summary Orders available for exchange-listed securities.

Nasdaq represents that, under current Nasdaq Market Center processing, quotes already provide the lock/cross warning via rejection attributes of the Summary Order. Orders that are not designated as Summary, however, do not provide similar lock/cross warning capabilities and are considered immediately executable indications of trading interest that would be executed by the system if they locked or crossed the Nasdaq inside market.

Nasdaq believes that the ability to receive a warning via order rejection when entering a locking or crossing order is an important component in enhancing Nasdaq market participants' control over how their orders are processed in the Nasdaq Market Center. Nasdaq represents that, through the availability of the Summary Order lock/cross warning, market participants can themselves determine if they desire to immediately execute against available trading interest, or instead provide liquidity via a posted order. Nasdaq believes that this control is especially important in today's trading environment, where smaller spreads accentuate transaction costs. Such costs can be minimized by being a provider of liquidity that, in some cases, entitles the submitting party to an execution fee rebate, thereby reducing overall transaction costs. As noted above, lock or cross warnings similar to those provided by the Summary Order are available today to Nasdaq market participants that use quotes when representing trading interest in the Nasdaq Market Center. By also making lock/cross warnings via order rejection an option for orders entered by market participants, Nasdaq believes that the ability of market participants would be enhanced to obtain better, more economically efficient executions for themselves and their customers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,³ in general, and with Section 15A(b)(6) of the Act,⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that the increased control given to all market participants through the use of Summary Orders would assist in improving execution quality for themselves and their customers. In addition, to the extent that expansion of the Summary Order to attributable orders encourages the submission of greater amounts of trading interest in the form of such orders into the Nasdaq Market Center, Nasdaq believes that all market participants can be expected to benefit from such increased system liquidity.

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 either solicited or received.

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 Nasdaq 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,

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(6).

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. Please include File Number SR-NASD-2005-057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-057. 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 Nasdaq. 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-2005-057 and should be submitted on or before September 15, 2005.

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. 34-52280; File No. SR-NASD-2005-095]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity Securities

August 17, 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 July 28, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, which Items have been prepared by NASD. On August 16, 2005, NASD 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

NASD is proposing to amend NASD Rule 6750 to impose restrictions on the display of quotes and orders in sub-penny increments for non-Nasdaq OTC equity securities. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

* * * * *

6750. [Minimum] Quotation [Size] Requirements for OTC Equity Securities

- (a) No change.
- (b) *No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment smaller than \$0.01 if that bid or offer, order or indication of interest is priced equal to or greater than \$1.00 per share.*
- (c) *No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment smaller than \$0.0001 if that bid or offer, order or indication of interest is priced equal to or greater than \$0.01 per share and less than \$1.00 per share.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NASD made minor clarification to the proposed rule text, corrected typographical errors, and changed the proposed compliance date for the rule change.

[(b)](d) For purposes of this Rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of the Rule 4630 and 4640 Series, or as an "eligible security," for purposes of the Rule 6400 Series. The term does not include "restricted securities," as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL MarketSM.

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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, NASD 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. NASD 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

NASD is proposing a rule change that would prohibit the accepting, ranking, or displaying of quotes, orders, or indications of interest in sub-penny increments for all non-Nasdaq OTC equity securities in any quotation medium,⁴ except for quotes, orders, and indications of interest priced at less than \$1.00 per share. NASD believes that the existing quotation environment, in which market participants use quotation increments ranging from pennies to hundredths of pennies, can harm investors by creating a two-tiered market, one for ordinary investors and another for professionals, undermining important Commission and self-regulatory organization policy objectives. The potential harm associated with sub-penny quoting in national market stocks is described in the Commission's Proposing Release and Adopting Release for Regulation NMS,⁵ and, in NASD's view, essentially

⁴ "Quotation medium" is defined in NASD Rule 6710(f) and includes, among others, the Over-the-Counter Bulletin Board and the Electronic Pink Sheets.

⁵ See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004) (Proposing Release); Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77423 (December 27, 2004) (Reproposing Release);

Continued

⁵ 17 CFR 200.30-3(a)(12).