

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42871; File No. SR-NASD-00-21]

### Self-Regulatory Organization; 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

May 31, 2000.

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 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.<sup>3</sup> 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 amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed on a weighted average basis, or effected based on other special pricing formulae, to be reported with a special indicator. Proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 6420. Transaction Reporting

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

(6) All members shall report [agency cross] 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 to Nasdaq using a special indicator, as designated by the Association.

(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

The NASD proposes to amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities executed in the over-the-counter market and done on a weighted average or other special-pricing basis to be reported with a .W trade modifier.

NASD Rule 6420 sets out NASD member reporting obligations for transactions in exchange-listed securities effected in the over-the-counter market (*i.e.*, third market transaction). NASD Rule 6420(a)(6) requires members to append a special indicator (.W) to a trade report when effecting agency crosses at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security. The NASD adopted this rule in 1994,<sup>4</sup> in part, because these weighted-average trades were being effected in the third market at a price that did not relate to the closing price on the primary exchanges, but such trades affected the reporting of the last sale in the exchange listed security to the media and vendors. Pursuant to Rule 6420, these weighted average or special pricing formulae trades, when reported with the .W modifier, do not affect the last sale price.

According to the NASD, when adopted, the scope of Rule 6420(a)(6) was limited to agency cross trades effected on a weighted average basis or other special pricing formulae because a

majority of the trades at the time were being effected on an agency cross basis. Since 1991, the market has changed in many ways. In particular, the NASD 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. Eastern Time<sup>5</sup> to facilitate after-hours trading.<sup>6</sup> As part of this initiative, the NASD amended Rule 6420 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 this rule change 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 p.m.—to 90 second trade reporting requirements. Recently, the NASD 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 transactions, which are effected on a principal or riskless principal basis. These volume-weighted 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. Because these trades are not executed as agency crosses and thus not subject to the .W reporting requirement in Rule 6420(a)(6), they are reported to the tape without a modifier and they affect the reporting to the media and vendors of the last sale in the exchanged-listed security. As such, there is the potential for disorderly markets when the 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. As a short-term method of alleviating confusion before this rule change could be proposed, the NASD 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.

The NASD proposes to amend NASD Rule 6420 to require all transactions, not

<sup>5</sup> All times mentioned in this proposal are Eastern Standard times.

<sup>6</sup> 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).

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

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

<sup>3</sup> Nasdaq originally filed the proposal on April 14, 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.

<sup>4</sup> See Securities Exchange Act Release No. 29632 (August 30, 1991), 56 FR 46022 (September 9, 1991) (order approving File No. SR-NASD-91-37).

just agency crosses, in exchange-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) <sup>7</sup> 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, Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii) <sup>8</sup> 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 will reduce 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,<sup>9</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

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. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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-00-21 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</sup> 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 April 14, 2000.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42859; File No. SR-NSCC-00-04]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in Fee Schedule**

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 6, 2000, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change consists of changes to NSCC's fee schedule.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On December 30, 1999, NSCC filed a rule change to amend its fee schedule to charge fees to members using its Insurance Processing Services ("IPS") for the transmission of test, as well as production, files.<sup>3</sup> These charges became effective on January 3, 2000. However, in order to encourage industry participation in pilot test development programs, NSCC has determined that it

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> Securities Exchange Act Release No. 42336 (January 12, 2000), 65 FR 3514.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).