

respectively, may seek. In light of the shift of certain regulatory responsibilities from Market Operations to *MarketWatch*, as described in the preceding paragraph, the examples contained in NASD Rule 4625 need to be realigned accordingly, since certain types of information that previously would likely have been sought by Market Operations, would now be most likely needed by *MarketWatch* as it exercises its newly-acquired authority (which would shift to it from Market Operations) under the proposed rule change.

Furthermore, Nasdaq wishes to clarify the language in one of the examples contained in NASD Rule 4625. The example currently contained in paragraph (a)(2)(D) of NASD Rule 4625<sup>7</sup>, refers to information relating to “the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890.” NASD Rule 5262 focuses on InterMarket trade-through complaints. Rules 5265 and 11890, however, make no reference to trade-through complaints but rather focus on the authority to adjust other transactions. As such, a clarification is desirable in order to identify specifically Nasdaq’s authority to seek, and members’ obligation to provide, information relating to “the resolution of a trade-through complaint, *or other transaction*, pursuant to NASD Rules 5262, 5265, and 11890.”

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> including sections 15A(b)(2) and (6) of the Act,<sup>9</sup> which require, respectively, that (i) NASD be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD and (ii) the rules of the NASD 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. Nasdaq believes that, at this time, *MarketWatch*, rather than Market Operations, is the most appropriate department to handle certain regulatory responsibilities referenced above. As such, the organizational realignment and the corresponding proposed rule changes are consistent with the requirements of the Act. Furthermore, the proposed clarifying change in the language of the example currently contained in NASD Rule 4625(a)(2)(D) will make that rule’s meaning more transparent, thereby helping advance the investor protection and public interest objectives of the Act.

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

Nasdaq does not believe that the proposed rule change, as amended, 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 sections 19(b)(3)(A)(i) and (iii) of the Act<sup>10</sup> and Rules 19b-4(f)(1) and (3) thereunder<sup>11</sup> in that it, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, concerns solely with the administration of the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 4, 2003, when Amendment No. 1 was filed.<sup>12</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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-125 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-23550 Filed 9-15-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48468; File No. SR-NASD-2003-113]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Codify Nasdaq’s Existing Authority To Implement a “Quote-Only Period” Before the Start of Trading in Initial Public Offerings on Nasdaq**

September 10, 2003.

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 July 21, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange

<sup>7</sup> Under the proposed rule change, this example would be moved to paragraph (a)(1)(G) of NASD Rule 4625.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(2) and (6).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(1) and (3).

<sup>12</sup> See n.3, *supra*.

<sup>13</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.

Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. On September 2, 2003, Nasdaq amended the proposed rule change.<sup>3</sup> Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice, as amended, 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 seeks to codify under NASD Rule 4120 Nasdaq's existing authority to implement a "Quote-Only Period" ("Period") before the start of trading in initial public offerings ("IPOs") on Nasdaq. The text of the proposed rule change is below. Proposed new language is in italics.

#### **4120. Trading Halts**

##### **(a) Authority To Initiate Trading Halts**

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1)–(6) No Change.

(7) *Halt trading in a security that is the subject of an Initial Public Offering on Nasdaq.*

##### **(b) Procedure for Initiating a Trading Halt**

(1)–(6) No Change.

(7) *A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute period during which market participants may enter quotes in that security in Nasdaq systems. If the inside market is not locked or crossed at the conclusion of that 15-minute period, Nasdaq will release the security for trading and terminate the halt. If the inside market is locked or crossed at the conclusion of the initial 15-minute*

*period, Nasdaq will extend the halt for an additional 15 minutes during which quotations may be entered in Nasdaq systems. At the conclusion of the second 15-minute period, the halt shall be terminated and the security released for trading.*

\* \* \* \* \*

### **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 amend NASD Rule 4120 to codify that NASD members or persons associated with NASD members are prohibited from executing trades, directly or indirectly, in a Nasdaq IPO prior to the conclusion of a quote-only period and the dissemination over the consolidated tape of a trade in that security on the Nasdaq Stock Market.

Section 12 of the Act<sup>6</sup> and Rule 12f-2 thereunder<sup>7</sup> prohibit off-exchange trading of IPOs of exchange-listed securities prior to the first trade on the listing exchange. This prohibition ensures the smooth functioning of the market during the initial trading of these IPOs that might otherwise experience volatility that may be observed in the opening of IPOs for secondary market trading. The prohibition also helps to ensure that markets are not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly. Market participants are better able to digest and respond to market price indications before an IPO is released for trading, and thus to provide better information upon which to make trading decisions.

The Act does not extend this protection to over-the-counter listings such as those on Nasdaq. Therefore, in 1994, Nasdaq established a quotation-only time period for quoting

participants to enter and adjust their first quotations for IPO securities.<sup>8</sup> Prior to the Period, NASD members may not disseminate quotes or trades in the IPO security. During the Period, NASD members are prohibited from effecting trades, either directly or indirectly, in the Nasdaq IPO security. Market participants may freely quote and trade once the Period has ended and Nasdaq has released the security for trading.

In 1998, Nasdaq modified and expanded the Period.<sup>9</sup> As amended and as is current practice, the initial Period lasts for 15 minutes. If the market is locked/crossed at the end of the first 15 minutes of the Period, Nasdaq extends the Period for an additional 15 minutes, after which trading in the security is released. Although Nasdaq monitors quotations for the entire 15 minutes, the determination whether to extend the Period is based solely on whether the market is locked or crossed at the end of that Period.

When the Commission approved Nasdaq's 1998 proposal to extend the Period, Nasdaq noted that its practice of imposing a Period is related to its authority to halt trading pursuant to NASD Rule 4120.<sup>10</sup> NASD Rule 4120 provides Nasdaq with authority to halt trading in securities in a number of circumstances in which Nasdaq deems a trading halt necessary to protect investors and the public interest. Prior to the adoption of the pilot amendment, the specific bases for initiating a trade halt focused primarily on ensuring that all investors have access to material news about an issuer. Nasdaq believes that the IPO Period shares the characteristics that are common to trade halts, including the presence of unusual market conditions and the possible lack of complete information upon which to base investment decisions.

Although Nasdaq's 1998 proposal referenced NASD Rule 4120, Nasdaq did not amend Rule 4120 at that time. Nasdaq believes that it is necessary and appropriate to codify Nasdaq's existing authority as established by Commission approval in 1998. Some market participants have expressed to Nasdaq their confusion or uncertainty about the Period. Therefore, Nasdaq submits this proposal to ensure that its authority is

<sup>3</sup> See August 29, 2003 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original proposed rule change.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6). The Commission considers the original filing to have satisfied Nasdaq's obligation to provide the Commission with notice of its intention to file the proposed rule change pursuant to Rule 19b-4(f)(6). Nasdaq asked the Commission to waive the 30-day operative delay.

<sup>6</sup> 15 U.S.C. 78l.

<sup>7</sup> 17 CFR 240.12f-2.

<sup>8</sup> See Securities Exchange Act Release 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994)(SR-NASD-94-37).

<sup>9</sup> See Securities Exchange Act Release 40968 (January 22, 1999), 64 FR 4729 (January 29, 1999)(SR-NASD-98-98).

<sup>10</sup> *Id.* at footnote 4. Specifically, Nasdaq stated that the Quote Only Period "like the objectives in [NASD] Rule 4120, is designed to ensure that the market is not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly."

clearly articulated in an approved rule, and that the implications of that rule be clearly understood by all market participants and investors. The proposal is designed to codify Nasdaq's existing authority and not to modify or expand it any manner.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>11</sup> including section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

In addition, section 15A(b)(11) of the Act<sup>13</sup> requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Nasdaq believes the proposal is designed to protect investors and to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

## 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 with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change,<sup>16</sup> 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.

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow Nasdaq to immediately codify its existing authority to implement a Period before the start of trading in IPOs. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>17</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-113 and should be submitted by October 7, 2003.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> The Commission considers the 60-day abrogation period to have commenced on September 2, 2003, the date Nasdaq filed Amendment No. 1.

<sup>17</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-23551 Filed 9-15-03; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3543]

#### State of Florida

Palm Beach County and the contiguous counties of Broward, Glades, Hendry, and Martin Counties in the State of Florida constitute a disaster area due to damages caused by severe storms and tornadoes on August 7, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 10, 2003 and for economic injury until the close of business on June 9, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

*The interest rates are:*

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere .....	5.125
Homeowners without Credit Available Elsewhere .....	2.562
Businesses with Credit Available Elsewhere .....	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere .....	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere .....	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.100

The number assigned to this disaster for physical damage is 354311 and the number for economic injury is 9W8700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 9, 2003.

**Hector V. Barreto,**  
Administrator.

[FR Doc. 03-23599 Filed 9-15-03; 8:45 am]

BILLING CODE 8025-01-P

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78o-3.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78o-3(b)(11).