

or in furtherance of the purposes of the Act.⁹

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 CBOE. All submissions should refer to File No. SR-CBOE-2002-37 and should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46270; File No. SR-NASD-2002-78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying That Failure to Provide Information to Nasdaq or Making Misrepresentations to Nasdaq May Result in Delisting From Nasdaq

July 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

⁹ For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on July 24, 2002, the date the Exchange filed Amendment No. 1.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on June 11, 2002, 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. Nasdaq submitted Amendment No. 1 to the proposed rule change on July 12, 2002.³ Nasdaq filed the proposed rule change, as amended, pursuant to section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(1) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend Nasdaq Rule 4330(c) to clarify that issuers may be delisted for failing to provide information to Nasdaq or for making material misrepresentations to Nasdaq. The text of the proposed rule change is below; proposed new language is italicized:

* * * * *

Rule 4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria.

(a)-(b) No change

(c) Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. Information requested pursuant to this subparagraph shall be submitted within a reasonable period. *An issuer may be delisted if it fails to provide such information. An issuer may also be delisted if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make*

³ This notice, representing Amendment No. 1, replaces the original filing in its entirety. In Amendment No. 1, the Exchange designated the proposed rule change as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to Rule 19b-4(f)(1) under the Act. 17 CFR 240.19b-4(f)(1). See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 2002 ("Amendment No. 1").

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(1).

the communication to Nasdaq not misleading.

* * * * *

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

As a result of recent events, Nasdaq has focused on ways to improve the corporate governance of listed companies. After considering these issues, Nasdaq identified several rule changes that could be instituted in the short term and identified these changes in an April 11, 2002, letter to Commission Chairman Harvey Pitt. While not specifically referenced in the letter to Chairman Pitt, Nasdaq also proposes certain other changes to strengthen corporate governance standards. Specifically, Nasdaq proposes to clarify that an issuer can be delisted for misrepresenting material information to Nasdaq. NASD rules do not explicitly state that an issuer that makes a material misrepresentation to Nasdaq, omits necessary material information in a communication with Nasdaq, or otherwise fails to provide requested material information, may be delisted. While Nasdaq believes that existing rules allow for delisting in these situations, Nasdaq proposes to modify the rules to clarify this.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b) of the Act,⁶ in general, and furthers the objectives of section 15A(b)(6),⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

⁶ 15 U.S.C. 78o-3(b).

⁷ 15 U.S.C. 78o-3(b)(6).

and a national market system, and, in general, to protect investors and the public interest.

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

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, the rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁸ and Rule 19b-4(f)(1) thereunder.⁹

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁰

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-2002-78 should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46260; File No. SR-NASD-2002-67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of References to the Term "Agency Quote" From the Rules of the Nasdaq National Market Execution System and the Nasdaq Order Display Facility

July 25, 2002.

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 28, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 12, 2002, Nasdaq filed Amendment No. 1 to the proposal.³ On July 24, 2002,

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 11, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made corrections to its proposed rule text which replaced the rule text in the original filing entirely and added a footnote in its discussion to clarify that this filing would remove language from Nasdaq rules referring to the "agency quote" concept that contemplated allowing market participants to represent agency trading interest via a quotation separate from that used for their proprietary trading. The rules retain, where appropriate, references to the term "agency" when used as a description of the capacity in which a market participant is acting on behalf of a customer order.

Nasdaq filed Amendment No. 2 to the proposal.⁴ 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 proposes to eliminate all references to the term "agency quote" that are contained in the Nasdaq National Market Execution System and Nasdaq Order Display Facility (collectively "SuperMontage"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, and at the Commission.

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 eliminate all references to the term "agency quote" that are contained in the SuperMontage. On February 3, 1999, Nasdaq filed SR-NASD-99-09, in which Nasdaq proposed to implement a system to allow market makers to display customer limit orders under a separate market participant identifier.⁵ Colloquially known as the Agency Quote proposal, the Commission published the proposal for comment on March 2, 1999.

Separately, on October 1, 1999, Nasdaq filed to amend the Nasdaq National Market Execution System rules

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 24, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made corrections to its proposed rule text in NASD Rule 4701 and 4710. For purposes of calculating the 60-day abrogation period and the 30-day operative date, the Commission considers the period to have commenced on July 24, 2002, the date Nasdaq filed Amendment No. 2.

⁵ See Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198 (March 11, 1999).

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).

¹⁰ The proposed rule change became effective on July 12, 2002, the date on which Amendment No. 1 was filed and, therefore, the 60 day abrogation period began on July 12, 2002.