

The proposed extension of the pilot program for an additional two years would provide NASD with a mechanism to continue to take appropriate remedial action against a member or an associated person who has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously. At the same time, the pilot program continues to contain numerous procedural checks and safeguards to ensure that cease and desist proceedings are used prudently, sparingly and fairly. In addition, the extension of the pilot program would allow NASD to analyze more thoroughly the pilot program's overall effectiveness. Accordingly, NASD believes it is appropriate to extend the pilot period regarding cease and desist orders for another two years.

The proposed rule change is effective upon filing, would be operative on June 23, 2005, and would expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules 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. NASD also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(7) of the Act,<sup>8</sup> which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or NASD's rules. NASD believes that the extension of the pilot program is consistent with NASD's obligations under the Act because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

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

NASD does not believe that the proposed rule change will impose any burden on competition 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*

NASD has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing 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 the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

In accordance with Rule 19b-4,<sup>11</sup> NASD submitted written notice of its intent to file the proposed rule change extending the pilot, along with a brief description and text of the proposal, at least five business days prior to the date of filing. NASD proposes to make the proposed rule change operative on June 23, 2005. The rule change would expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-061 on the subject line.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4.

### *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-2005-061. 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 the filing also will be available for inspection and copying at the principal offices 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 Number SR-NASD-2005-061 and should be submitted on or before July 14, 2005.

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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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-51859; File No. SR-NASD-2005-068]**

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding a New Order Type for the Pre-Market Trading Session**

June 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

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

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

<sup>8</sup> 15 U.S.C. 78o-3(b)(7).

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 25, 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 is filing a proposed rule change to establish a new order type called the Total Good-till-Canceled Order, which would be eligible for execution during the pre-market trading session.<sup>3</sup> The text of the proposed rule change is set forth below. Proposed new language is in italics.<sup>4</sup>

\* \* \* \* \*

#### **4701. Definitions**

(a)–(ss) No Change.

(tt) The term “Total Good-till-Cancelled” or “GTX Order” shall mean,

(a) for orders in *ITS Securities* so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(b) for orders in *Nasdaq-listed securities* so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4 p.m. and for execution between 8 a.m. and 4 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(uu) No Change.

\* \* \* \* \*

#### **4704. Opening Process For Nasdaq-Listed Securities**

(a) No Change.

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

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

<sup>3</sup> Nasdaq neglected to complete this sentence. The staff of the Division of Market Regulation of the Commission therefore completed the sentence to include a summary description of the proposed rule change.

<sup>4</sup> The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at <http://www.nasd.com>.

(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders in Nasdaq-listed securities at 8 a.m. in the following manner to prevent the creation of locked/crossed markets.

(1) At 8 a.m., the system shall open in time priority all eligible Quotes as stated in paragraph (5) below and all eligible Orders in accordance with Rule 4701(ss), (tt) and (uu). Quotes/Orders whose limit price would not lock or cross the book shall be added to the book in strict time priority. Quotes/Orders whose limit price would lock or cross the book shall be placed in an “In Queue” state except as provided in paragraph (4).

(2) No Change.

(3) Once the process set forth in subparagraphs (1)–(2) is complete, the system shall begin processing Quotes and X, GTX and IOX Orders in accordance with their entry parameters.

(4)–(7) No Change.

(c)–(d) No Change.

\* \* \* \* \*

### **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**

On April 18, 2005, Nasdaq launched a voluntary pre-market trading session of the execution service of the Nasdaq Market Center that begins at 8 a.m. rather than at 9:25 a.m. Currently, Nasdaq has two extended hours order types that are eligible for execution during the pre-market trading session: the Total Day Order (“X Order”) described in NASD Rule 4701(ss) and the Total Immediate or Cancel Order (“IOX Order”) described in NASD Rule 4701(uu). The X Order interacts with Nasdaq systems exactly as does the Day Order, except that it is eligible for display and execution during extended hours trading (trading that occurs outside normal market hours of 9:30 a.m. EST and 4 p.m. EST). Likewise, the

IOX Order interacts with Nasdaq systems exactly as does the Immediate or Cancel Order (“IOC Order”) except that it too is eligible for execution during extended hours trading.

Nasdaq is proposing to introduce for Nasdaq-listed securities the “Total Good-till-Cancelled” or “GTX” order type that is currently available for exchange-listed securities only. The GTX Order for Nasdaq-listed securities would be processed precisely as the Good-till-Cancelled order, except that it would be available for display during the pre-market trading session in addition to the regular trading session. Specifically, Nasdaq proposes to amend NASD Rule 4701(tt) to make GTX Orders available for entry and display at 7:30 a.m., at which time they would receive a time stamp for purposes of determining time priority. In addition, Nasdaq is proposing to amend NASD Rule 4704(b)(1) to make GTX Orders eligible for execution between 8 a.m. and 4 p.m. just as X and IOX orders are today.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> in general, and with Section 15A(b)(6) of the Act,<sup>6</sup> in particular, in that Section 15A(b)(6) requires the NASD’s rules to be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD’s obligations under these provisions of the Act because it would result in more orderly trading of Nasdaq stocks. It would also promote price discovery, order interaction and transparency during the pre-market trading session by encouraging the submission of additional orders into the Nasdaq market center.

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

Nasdaq does not believe that the proposed rule change would 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**

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

<sup>5</sup> 15 U.S.C. 78o-3.

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

### 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 the self-regulatory organization 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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-068 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 20549-9309. All submissions should refer to File Number SR-NASD-2005-068. 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 the 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 Number SR-NASD-2005-068 and should be submitted on or before July 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51857; File No. SR-NASD-2004-011]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Industry Disputes**

June 15, 2005.

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 January 16, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On February 26, 2004, NASD filed Amendment No. 1 to the proposed rule change. On January 3, 2005, NASD amended the proposed rule change a second time. On April 8, 2005, and June 10, 2005, NASD filed Amendments No. 3 and 4, respectively, to the proposed rule change. 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 amend the NASD Code of Arbitration Procedure ("Code") to reorganize the current rules, simplify the language, codify current practices,

and implement several substantive changes. NASD is proposing to reorganize its current dispute resolution rules (Rules 10000 *et seq.*) into three separate procedural codes: The NASD Code of Arbitration Procedure for Customer Disputes ("Customer Code"); the NASD Code of Arbitration Procedure for Industry Disputes ("Industry Code"); and the NASD Code of Mediation Procedure ("Mediation Code"). The three new codes will replace the current NASD Code in its entirety. NASD is also proposing to make certain substantive amendments to the Code as described herein. This rule filing contains the proposed Industry Code, the text of which is available on the NASD Web site at [http://www.nasd.com/web/idcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=NASDW\\_009295&ssSourceNodeId=801](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_009295&ssSourceNodeId=801).<sup>3</sup> A chart comparing the current Code and the proposed Industry Code, as well as an old-to-new conversion guide, are also available at the same URL.<sup>4</sup>

#### **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 has 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*

##### *(a) Purpose*

This rule filing is part of a comprehensive plan to reorganize and simplify the NASD Code of Arbitration Procedure. Specifically, NASD is proposing to:

- Reorganize its dispute resolution rules in a more logical, user-friendly way, including creating separate Codes

<sup>3</sup> The proposed Customer Code and proposed Mediation Code have been filed separately with the Commission as SR-NASD-2003-158 and SR-NASD-2004-013, respectively.

<sup>4</sup> For purposes of this filing, the version of the current Code used in the comparison and conversion charts includes all NASD Dispute Resolution rule filings that have been approved by the Commission since the proposed rule change was filed on January 16, 2004.

<sup>7</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.