

Rule 24.17A, RAES Operations in DJX, which will be the same for OEX except for the maximum contract size eligible for RAES. The maximum size for RAES in DJX will be up to 100 contracts, whereas the maximum size for OEX is 10 contracts. Similar to OEX, the Exchange will have the authority to choose which DJX series will be eligible for RAES.¹⁸

As a general rule, the Commission believes that customer limit orders in the limit order book should receive priority protection over other orders when the quoted market touches the limit order. Specifically, RAES orders generally should not be executed by market makers when customer limit orders are also price eligible to interact with the RAES orders. The Commission believes that exceptions to this principle are only appropriate in limited circumstances where it is unlikely that affected limit orders will receive an inferior execution. The Commission has previously approved CBOE rule changes that afforded such an exception in two highly liquid options classes, OEX index options and IMB equity options. After careful review, the Commission has determined that it is appropriate to allow DJX RAES orders to be automatically executed notwithstanding the possibility that customer limit orders could be priced identically to the prevailing disseminated best bid or offer. The Commission notes that it is basing this approval upon the fact that the Exchange expects DJX to be a heavily traded index product. As a result, it is anticipated that most limit orders will receive fair executions, particularly since CBOE Rule 6.45 ensures that no transaction can take place on the floor at a price equal to or better than the price of the booked order until the booked order has been filled. The Commission expects the Exchange to monitor the actual depth and liquidity of the DJCX trading floor and the treatment of customer orders on the limit order book that are traded behind RAES orders at the market.

The Commission also believes that increasing the number of DJX contracts eligible for RAES and to increase the firm quote requirement for DJX is consistent with the Act because options on the DJIA are approximately one-tenth the value of options on indexes underlying other broad-based indexes.¹⁹

Therefore, increasing the RAES eligibility and firm quote requirements for DJX should enhance market maker obligations and commitments in these options, as well as help add depth and liquidity to the market for DJX. In addition, increasing the size of the RAES eligibility for DJX will provide the benefits of RAES execution to a larger number of customer orders and reduce the number of transactions to be executed manually on the floor, which could increase the efficiency of executing non-RAES orders.

The Commission believes it is consistent with the Act to amend the Minor Rule Plan fine amount for violations of the firm quote rule for both OEX and DJX because the amended fine schedule should still ensure adequate and effective enforcement of the firm quote program. The amended fine amount for third and fourth violations of the firm quote policy, which will be \$2500²⁰ is a reasonable amount in order to help deter non-compliance with the firm quote program, and there will now be mandatory referral to the BCC for any violations after the fourth violation. In addition, the Commission notes that the Exchange always has the authority to commence a full disciplinary proceeding under Exchange Rule 17.2 under its Minor Rule Plan program for any violation of the firm quote program, and that the CBOE stated that it will exercise this authority in egregious situations.²¹

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it believes the proposed changes to the various trading rule should become effective prior to the day that the CBOE begins to trade options on the DJIA, in order to ensure that all rules applicable to trading DJIA options are in place prior to when such trading commences. In addition, the Commission has previously approved similar increases in the number of options contracts

hundredth of the DJIA and that the same reasoning would not apply if the COE were to start trading an options contract based upon one-tenth of the DJIA. The Commission expects the CBOE to reset the RAES eligible size and the firm quote limit accordingly for an options contract based on one-tenth of the DJIA.

²⁰ The current fine schedule for violations of the firm quote program for OEX states that the fine for third and subsequent violations is \$3000 to \$5000.

²¹ The Commission believes it is reasonable under the Act to amend Rule 8.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options because DJX will now be covered by the RAES eligibility rule for OEX.

eligible for automatic execution on other options exchanges²² and has previously approved the almost identical firm quote program for OEX.²³ Finally, the Commission believes that the proposed rule change does not raise any significant regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2)²⁴ that the proposed rule change, as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39196; File No. SR-NASD-97-60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trading Halts

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, with Items have been prepared by the Nasdaq Stock Market, Inc. ("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 proposing to amend NASD Rule 4120 and IM-4120-1 to expand Nasdaq's trading halt authority and to clarify procedures for initiating certain trading halts. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

4120. Trading Halts

(a) Authority to Initiate Trading Halts

In circumstances in which [the Association] *Nasdaq* deems it necessary to protect investors and the public

²² See *supra* note 4.

²³ See *supra* note 5.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹⁸ The Commission requests that the CBOE distribute a Notice to Members discussing all RAES operations and policies that will apply to DJX. In addition, the Commission expects CBOE, in the near future, to codify RAES operations for OEX and DJX in manner similar to that for SPX.

¹⁹ The Commission notes that this reasoning applies to an option contract based upon one-one-

interest, [the Association] *Nasdaq* may, pursuant to the procedures set forth in paragraph (b):

(1) halt trading in the over-the-counter market of a security *listed on Nasdaq* [authorized for inclusion in *Nasdaq* pending] *to permit* the dissemination of material news;

(2) halt trading in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) halt trading by [ITS/CASES]: (i) *CQS* market makers [of a] *in a CQS* security [listed on a national securities exchange and authorized for inclusion in the ITS/CAES linkage during] *when a national securities exchange imposes a trading halt [imposed by such exchange] in that CQS security* because of an order imbalance or influx ("operational trading halt"); or (ii) *Nasdaq* market makers *in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security.* [ITS/CAES] *CQS and Nasdaq* market makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b)[.]; or

(4) *halt trading in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the securities underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or*

(5) *halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:*

- (i) *material news;*
- (ii) *the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 and 4400 Series; or*
- (iii) *any other information which is necessary to protect investors and the public interest.*

(b) Procedure for Initiating a Trading Halt

(1) [The Board of Governors requires that] *Nasdaq* issuers *are required to* notify [the Association]*Nasdaq* of the release of any material news prior to the release of such information to the press as required by Rule 4310(c)(16) and 4320(d)(15).

(2) Notification shall be provided directly to [the Association's Market Regulation] *Nasdaq's MarketWatch* Department by telephone, *facsimile, or other compatible means of electronic communication.** Information communicated orally by authorized representatives of a *Nasdaq* issuer should be confirmed promptly in writing.

(3) Upon receipt of [the] information [the Association, after consultation with the issuer,] *from the issuer or other source, Nasdaq* will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

[(4) Should the Association determine that a trading halt pending the dissemination of material news is necessary and in the public interest, the trading halt will become effective simultaneously with appropriate notice in the *Nasdaq* "NEWS" frame.

(5) Should a national securities exchange notify the Association that it has halted or will halt trading in a security listed on that exchange pending the dissemination of material news, the Association may halt trading in such security in the over-the-counter market. The commencement of the trading halt will be effective simultaneously with appropriate notice in the *Nasdaq* "NEWS" frame.]

(4) *Should Nasdaq determine that a basis exists under Rule 4120(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) for initiating a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq "NEWS" frame.*

[(6)] (5) Trading in a halted security shall resume upon notice via the *Nasdaq* "NEWS" frame that a trading halt is no longer in effect.

IM-4120-1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(d)(15) require that, except in unusual circumstances, *Nasdaq* issuers disclose promptly to the public through the news media any material information which would reasonably be expected to effect the value of their securities or influence investors' decisions and that *Nasdaq* issuers notify [the Association] *Nasdaq* of the release of any such information prior to its release to the public through the news media. [The Board of Governors] *Nasdaq* recommends that *Nasdaq* issuers provide such

notification at least ten minutes before such release.* Under unusual circumstances issuers [are] *may not be* required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its *legitimate* corporate objectives. However, *Nasdaq* issuers remain obligated to disclose this information to [the Association] *Nasdaq* upon request pursuant to Rules 4310(c)(15) or 4320(d)(14).

Whenever unusual market activity takes place in a *Nasdaq* issuer's securities, the issuer normally should determine whether [conditions requiring corrective action exist and, if so, should take whatever action is appropriate] *there is material information or news which should be disclosed.* If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, *or if information from a source other than the issuer becomes known to the investing public,* a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though *the issuer may not have previously been advised of such information* or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any *Nasdaq* securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known to them but which is not known to others. [A trading halt normally lasts until one half hour after the appearance of the news on wire services but it may last longer if a determination is made that the news has not been adequately disseminated.] A trading halt provides the public with an opportunity to evaluate the information and consider it

* Notification may be provided to the [Market Regulation] *MarketWatch* Department by telephone 1-800-537-3929, (301) 590-6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590-6413. Information communicated orally should be confirmed promptly in writing. The *StockWatch* fax number is (301) 590-6482.

* The current telephone number is 1-800-537-6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590-6413. The *StockWatch* fax number is (301) 590-6482.

in making investment decisions. It also alerts the marketplace to the fact that news has been released.

[The Association's Market Regulation] *Nasdaq's Market Watch* Department monitors real time trading in all Nasdaq series during the trading day for price and volume activity. In the event of certain price and volume movements, the [Market Regulation] *Market Watch* Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The [Market Regulation] *Market Watch* Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the [Market Regulation] *Market Watch* Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. *Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company.* Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the [Market Regulation] *Market Watch* Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated [a] effect of the information on the price of the issuer's securities, the [Market Regulation] *Market Watch* Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. *A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an*

additional basis under Rule 4120 exists for continuing the trading halt.

The [Market Regulation] *Market Watch* Department is required to keep non-public information[, including denial of rumors,] confidential and to use such information only for regulatory purposes.

Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature. The following list of events, while not an exhaustive summary of all situations in which disclosure to [the Association] *Nasdaq* should be considered, may be helpful in determining whether information is material. It should also be noted that every development that might be reported to [the Association] *Nasdaq* in these areas would not necessarily be deemed to warrant a trading halt.

- A merger, acquisition or joint venture;
- A stock split or stock dividend;
- Earnings and dividends of an unusual nature;
- The acquisition or loss of a significant contract;
- A significant new product or discovery;
- A change in control or a significant change in management;
- A call of securities for redemption;
- The public or private sale of a significant amount of additional securities;
- The purchase or sale of a significant asset;
- A significant labor dispute.
- Establishment of a program to make purchases of the issuer's own shares;
- A tender offer for another issuer's securities; and
- An event requiring the filing of a current report under the Act.

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

Nasdaq is proposing amendments to Rule 4120 to expand its existing trading halt authority. Rule 4120 currently sets out the bases on which Nasdaq may initiate trading halts. In addition to the existing bases, the proposed amendments authorize Nasdaq to: halt trading in the third market of a CQS security when a national securities exchange halts trading in such security for operational reasons; halt trading in a Nasdaq-listed security that is a derivative or component of a CQS security, when a national securities exchange halts trading in the underlying CQS security for operational reasons; halt trading in an American Depositary Receipt ("ADR") or other Nasdaq-listed security when a national or foreign securities exchange or regulatory entity imposes a regulatory trading halt in the security underlying the ADR or the Nasdaq-listed security; and halt trading when Nasdaq requests from an issuer information relating to material news or the issuer's compliance with Nasdaq listing qualification requirements. Additionally, the proposed amendments clarify that the procedures in the rule permit Nasdaq to initiate trading halts when material information emanates from a source other than the issuer.

First, the proposed amendments expand Nasdaq's existing authority to initiate a trading halt in the third market of an exchange-listed security when the primary market initiates an operational trading halt in such security.¹ Rule 4120(a)(3) currently authorizes Nasdaq to impose an operational trading halt in a security listed on a national securities exchange and traded through the ITS/CAES linkage.² Under the current rule, Nasdaq may initiate a trading halt when there is an order imbalance or influx in

¹ The "third market" is the market for exchange-listed securities away from exchange markets.

² ITS/CAES is the NASD's link to the Intermarket Trading System ("ITS"), which is a system that enables ITS/CAES market makers to trade certain exchange-listed securities—known as SEC Rule 19c-3 securities—by allowing such market makers to direct agency and principal orders to, and receive orders from, other ITS members. SEC Rule 19c-3 prohibits off-board trading restrictions from applying to securities that: (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. (The Computer Assisted Execution System ("CAES") is the NASD's automated system that allows members to direct principal and agency orders in exchange-listed securities to CAES for automated execution in the third market). Thus, pursuant to the ITS Plan, trading in ITS/CAES is limited to SEC Rule 19c-3 securities and excludes those securities not subject to SEC Rule 19c-3.

the security and the primary market halts trading to resolve operational issues. The proposed amendments expand Nasdaq's authority and permit Nasdaq to halt trading in all securities traded in the third market (*i.e.*, CQS securities)³—not just those securities traded through the ITS/CAES linkage—when a national securities exchange initiates an operational trading halt in the CQS security.⁴

In addition, the amendments authorize Nasdaq to halt trading in a security which is listed on Nasdaq and which also is a derivative or component of a CQS security (such as convertible bond, warrant, or unit), when a national securities exchange imposes an operational trading halt in the CQS security, *i.e.*, when a national securities exchange halts trading in a CQS security for an order imbalance. Currently, the Nasdaq-listed derivative security would not be halted in conjunction with the operational trading halt in the CQS security, thus making it difficult for market makers in the Nasdaq-listed security to price accurately the derivative security due to the lack of current pricing information in the underlying CQS security. That is, because the primary market is temporarily closed, price discovery is not occurring in that venue, and market makers must attempt to determine pricing independent of the primary market or may wait until the primary market reopens to price their issues. The proposed amendments, however, would allow Nasdaq to halt trading in the Nasdaq-listed security, such as a Nasdaq-traded convertible bond whose value is tied closely to an exchange-listed security, when a national exchange initiates an operational trading halt in a CQS security. Similar to the current provisions of Rule 4120(a)(3), the proposed amendments permit CQS and Nasdaq market makers to commence quotations and trading at any time following the initiation of the operational trading halt. Nasdaq believes that the proposed amendments foster orderly markets and investor protection because they allow Nasdaq to halt trading—based on a national securities exchange's operational trading halt—to allow market makers in

related issues to assess the situation and determine the appropriate pricing of the security.

Second, Rule 4120 is being amended to authorize Nasdaq to halt trading in an ADR or other security listed on Nasdaq, when a national or foreign securities exchange or regulatory authority, for regulatory reasons, imposes a trading halt in the security underlying the ADR or the dually-listed (Nasdaq) security. There are times when another exchange, market, or regulatory entity—such as a Canadian commission or European market center with which a Nasdaq company's securities are registered or listed—implements a regulatory trading halt. These trading halts sometimes occur because the issuer is delinquent in making a required filing with the national or foreign securities exchange or regulatory entity, or the market or regulatory entity halts trading in the company's stock for a violation of that entity's rules or regulations. For example, an issuer, which is registered as a reporting company with a Canadian regulatory commission and which also is a Nasdaq-listed company or has its ADRs listed on Nasdaq, becomes delinquent in its filings with the Canadian commission. The Canadian commission subsequently initiates a trading halt in the issuer's securities. Currently, trading would continue on Nasdaq even though regulatory concerns prompted another regulatory entity to halt trading in the issuer's securities, because the issuer is in compliance with Nasdaq filing requirements. Under the proposed amendments, however, Nasdaq could halt trading.

Specifically, the amendments authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when the Nasdaq-listed security underlying the ADR is listed on or registered with a national or foreign securities exchange or market and trading is halted in the security for regulatory reasons by such exchange or market, or regulatory authority overseeing such exchange or market. Thus, the amendments ensure investor protection because they allow Nasdaq to take coordinated action when another market or regulatory authority identifies a regulatory basis for halting trading in an issue.

Third, Rule 4120(a)(1) currently permits Nasdaq to halt trading in a Nasdaq-listed security to permit the dissemination of material news, and Rules 4120(b)(1)–(3) set out the procedures for doing so.⁵ Specifically,

Rule 4120(b)(1) requires Nasdaq issuers to inform Nasdaq of any material news prior to the release of such information, and Rule 4120(b)(3) authorizes Nasdaq to evaluate information provided by the issuer to determine if trading should be halted prior to the release of such information. Rule 4120(b)(3) does not specifically set out procedures for initiating a trading halt when Nasdaq is advised of material news about a particular Nasdaq issuer and such news emanates from a source other than that issuer. For instance, a Nasdaq issuer may be subject to an unsolicited take-over bid by another company, of which the Nasdaq-listed company is unaware. In such instance, the acquiring issuer might disseminate news about the unsolicited take-over bid to the public; thus, Nasdaq may learn of information warranting a trading halt from a source other than the Nasdaq issuer, such as a news headline.⁶ The proposed amendments to Rule 4120(b)(3) and IM-4120-1 clarify that Nasdaq may halt trading when Nasdaq learns of material news about an issuer, regardless of whether the news emanates from the particular issuer or from another source. Furthermore, proposed amendments to Rule 4120(b)(3) reflect that Nasdaq may halt trading without first consulting the issuer about material news because it may not be practicable or possible for Nasdaq to do so, such as when material news is released (without consultation with Nasdaq) by a source other than the issuer.

Next, the proposed amendments permit Nasdaq to halt trading when Nasdaq requests information from an issuer relating material news or qualification matters. For example, Nasdaq may be advised of material news about an issuer which appears to be

material news. (Rule 4120(a)(1) currently provides that trading in a Nasdaq-listed security may be halted "pending" the dissemination of material news.) The rule is being amended to specifically authorize Nasdaq to halt trading when material news technically is not "pending" but a trading halt is necessary to protect investors and maintain an orderly market. For example, there are instances where Nasdaq is not advised of pending material news, material news is disseminated partially, and Nasdaq learns of such news, and Nasdaq quickly determines that a halt is necessary to permit complete dissemination of the material news. Additionally, the amendments to Rule 4120(a)(1) will bring it into parity with the language in Rule 4120(a)(2).

⁶ If the company initiating the unsolicited take-over bid is a Nasdaq issuer, that company—in certain circumstances—may not be required to report the take-over bid to Nasdaq if such information is not material to the company. Thus, even if the company initiating the bid is listed on Nasdaq, Nasdaq may not be apprized of such information by either the Nasdaq company which is initiating the unsolicited take-over or the Nasdaq company which is the target of the unsolicited take-over.

³ The Consolidated Quotation System ("CQS") is a service that provides quotations of all participating exchange specialists and market makers on all securities listed on the New York Stock Exchange and the American Stock Exchange, and selected securities listed on the regional stock exchanges.

⁴ Thus, the proposed amendments would give Nasdaq expanded authority to initiate operational trading halts in the third market of SEC Rule 19c-3 securities, as well as those securities not subject to SEC Rule 19c-3.

⁵ The proposed change to Rule 4120(a)(1) specifies that trading in a Nasdaq-listed security may be halted "to permit" the dissemination of

factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM-4120-1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exists for continuing the halt. Furthermore, the statement in IM-4120-1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.⁷

The proposed amendments also include minor conforming changes to both Rule 4120 and IM-4120-1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM-4120-1 to the "Association" and "Market Regulation Department" have been replaced with references to "Nasdaq" and "MarketWatch Department" respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that

issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment 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. As noted above, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer), and thus will prevent fraudulent practices and protect investors. The proposed rule changes also will broaden Nasdaq's authority to impose operational trading halts in the over-the-counter markets when market conditions so warrant, and thus will remove impediments to and perfect the mechanism of a free and open market.

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

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 published 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 the file number SR-NASD-97-60 and should be submitted by November 3, 1997.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39198; File No. SR-NASD-97-73]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

⁷ Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

⁸ 17 CFR 300.30(a)(12).

¹ 15 U.S.C. 78s(b)(1).