

well-established and broad-based. In addition, the Commission continues to believe, as it has concluded previously, that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index.¹⁶ The Commission also believes that the weighting methodology for the Index should ensure that no one stock or groups of stocks dominates the Index, and reduces the potential influence of any one stock on the movement of the Index.¹⁷ In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,¹⁸ to approve the proposal on an accelerated basis.

The Commission is approving Nasdaq's proposed listing standards for the Notes. The Commission specifically notes that, notwithstanding approval of the listing standards for the Notes, other similarly structured products will require review by the Commission prior to being traded on Nasdaq.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2001-79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45016; File No. SR-NASD-2001-66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating To Display Requirements When Using Reserve Size in the Nasdaq National Market Execution System

November 5, 2001.

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 October 4, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 the NASD. On October 23, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.³ On October 29, 2001, the NASD submitted Amendment No. 2 to the proposed rule change.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

The NASD proposes to amend NASD Rule 4710 to reduce the 1000 share display size requirement to 100 shares for using the reserve size functionality

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 England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 23, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD intended to amend rule text; however, an unintentional oversight by the NASD resulted in the rule text remaining the same.

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated October 29, 2001 ("Amendment No. 2"). In Amendment No. 2, the NASD included the rule text change it unintentionally omitted in Amendment No. 1. Specifically, the NASD amended Nasdaq Rule 4710(b) to require a minimum of 100 shares displayed in a market maker's quote and that the market maker's quotation must be refreshed to 100 shares consistent with other provisions within the Rule. The NASD also changed the status of the proposed rule change from one filed pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), to one filed pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES").

The text of the proposed rule change, as amended, appear below. New text is in *italics*; deletions are in brackets.

4710. Participant Obligations in NNMS

(a) No Change.

(b) Market Makers

(1) An NNMS Market Maker in an NNMS Security shall be subject to the following requirements:

(A) For each NNM security in which it is registered as an NNMS Market Maker, the market maker must execute individual orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the displayed quotation and reserve size of such quotation(s). For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of [1,000] 100 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to [1,000] 100 shares consistent with subparagraph (b)(2)(A) of this rule.

(B)-(E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once an NNMS Market Maker's displayed quotation size on either side of the market in the security has been decremented to zero due to NNMS executions, Nasdaq will refresh the market maker's displayed size out of reserve size to a size-level designated by the NNMS Market Maker, or in the absence of such size-level designation, to the automatic refresh size. If the market maker is using the reserve size function for its proprietary quote or Agency Quote, the market maker must refresh to a minimum of [1,000] 100 shares, consistent with subparagraph (b)(1)(A) of this rule.

(B) No Change.

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

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of

¹⁶ See Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (order approving File No. SR-CBOE-93-42) (approving the listing and trading of Index options on the Chicago Board Options Exchange).

¹⁷ See Securities Exchange Act Release No. 40642 (November 5, 1998) 63 FR 63759 (November 16, 1998) (order approving File No. SR-CBOE-98-43).

¹⁸ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

these statements may be examined at the places specified in Item IV below. The 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

1. Purpose

The NASD asserts that NNMS/SuperSOES allows market makers to divide quoted share amounts submitted to the system between those shares they direct to display publicly in the Nasdaq montage and the shares they desire to keep in reserve. Known as "reserve size," shares kept in reserve are available for execution through SuperSOES, but are not shown to the marketplace.⁵ The NASD believes that reserve size is an important tool for market participants seeking to execute large securities transactions while limiting negative market price impacts associated with public knowledge of those attempted sales of purchases.

Currently, the rules of Nasdaq's SuperSOES system prohibit the use of its reserve size functionality unless a market maker is displaying at least 1000 shares in its public quote. To Nasdaq's knowledge, it is the only market or trading venue that imposes such a display obligation. The NASD claims that this requirements was initially imposed in the belief that it would encourage the display of larger sized share amounts in the Nasdaq market. The NASD believes that the advent of decimalization, however, has resulted in a diffusion of trading interest and liquidity across multiple price points that militates against the continuous display of large share amounts at a single price level. The NASD asserts that this particularly true for stocks that trade less frequently. In addition, the NASD believes that the continuation of the current rule places NNMS at a competitive disadvantage to other execution systems that allow the use of reserve size without a 1000-share display requirement.

As a result, Nasdaq proposes to eliminate the 1000-share display requirement for using NNMS reserve size. Under the proposed rule change, market makers would be allowed to use NNMS' reserve size anytime they displayed a quote of at least one round lot (100 shares). Nasdaq would continue

its policy of allowing the use of reserve size even if a particular displayed quotation dropped below 100 shares based on partial, interim, executions against that un-updated quote. The NASD believes that the elimination of the 1000-share display requirement makes NNMS reserve size functionality available to market makers on terms similar to the reserve size facilities of competing trading systems while continuing to encourage the display of trading interest through NNMS' "displayed size first" execution algorithm.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(6) of the Act,⁷ in particular, in that the proposal is 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.

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

The NASD 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or 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 publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-66 and should be submitted by December 4, 2001.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45021; File No. SR-OCC-2001-04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Forms of Margin Collateral

November 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 9, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on August 24, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to

⁵ Under NNMS's execution algorithm, the system executes against all publicly-displayed shares at the same price level before executing in time priority against reserve size at that same price.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).