

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC.

All submissions should refer to File No. SR-EMCC-98-08 and should be submitted by October 13, 1998.

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. 34-40365A; File No. SR-NASD-98-29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Standards for Individual Correspondence

September 15, 1998.

Correction

In FR Document No. 98-23769, beginning on page 47062 for Thursday, September 3, 1998, make the following correction. On page 47063, second column, the first full paragraph, revise the first sentence to read:

The NASDR proposes to define the word "correspondence" in new subparagraph (a)(3) to NASD Rule 2210 as " * * * [a]ny written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40437; File No. SR-NASD-98-60]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Automated Confirmation Transaction Service

September 14, 1998.

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 August 12, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The proposed rule change is designed to integrate Nasdaq's Automated Confirmation Transaction Service ("ACT") trade reporting system with the recently approved Order Audit Trail System ("OATS"). The text of the proposed rule change is available at the Office of the Secretary, Nasdaq, and at the Commission.

¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 III 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 its ACT trade-reporting rules to integrate them with the OATS rules, which were recently approved by the Commission.³ OATS is designed to provide the NASD's regulatory subsidiary, NASD Regulation, Inc. ("NASDR"), with the ability to reconstruct markets promptly, conduct efficient surveillance, and enforce NASD and SEC rules. The Commission has directed that OATS must provide an accurate, time-sequenced record of orders and transactions from the receipt of an order through its execution.⁴ To accomplish this goal, NASDR will combine information submitted to OATS with transaction data reported by members through ACT, as well as quotation information disseminated by Nasdaq. These proposed rules provide for the submission of data to ACT sufficient to allow for effective analysis and comparison of trading activity.

Under the proposal, all trade reports for OATS-eligible securities entered into Nasdaq's ACT system will be required to have a time of execution expressed in hours, minutes, and seconds. Such trade reports also will be required to have an order identifier, to be prescribed by the Association, sufficient to allow a comparison of the information contained in the trade report with data submitted to NASDR via OATS. In addition, Nasdaq is proposing to codify the requirement that all ACT participants, including those who have trade report information submitted to

³ See Securities Exchange Act Release No. 39729 (March 6, 1998) 63 FR 12559 (March 13, 1998) (order approving OATS rules); NASD Notice to Members 98-33 (March 1998).

⁴ See In the Matter of National Association of Securities Dealers, Inc., Securities Exchange Act Release No. 37538, August 8, 1996; Administrative Proceeding File No. 3-905, at 7-8.

⁸ 17 CFR 200.30-3(a)(12).

Nasdaq through third parties, obtain and use a unique Market Participant Symbol ("MPID") or "MMID") for trade reporting and audit trail purposes.

Nasdaq proposes that the rule changes requested here be implemented in tandem with the OATS testing and effectiveness dates, already approved by the Commission.⁵ NASD Rule 6957 establishes the following schedule for implementation of OATS reporting requirements: (1) March 1, 1999—electronic orders received by market makers or ECNs; (2) August 1, 1999—all electronic orders; (3) July 31, 2000—all non-electronic (manual) orders. Nasdaq believes that coordinating effective dates with the OATS schedule will help ensure that any new member obligations under the rule changes proposed here will not take effect materially in advance of the corresponding OATS mandates. Such coordination also will assist in a smooth migration of systems in conformity with OATS timetables. In addition, these limited changes to ACT's trade-reporting rules will allow Nasdaq to meet its OATS obligations to provide audit trail information to NASDR while protecting the current functionality and capacity of the ACT system.

2. Statutory Basis

Based on the foregoing, Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act⁶ in that the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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

Nasdaq does not believe that the proposed rule change will impose a 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

III. Solicitation of Comments

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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, 450 Fifth Street, N.W., Washington D.C. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR-NASD-98-60 and should be submitted by October 13, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq has requested that the Commission approve the proposal prior to the thirtieth day after publication in the **Federal Register**. The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act⁸ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that the proposal, which integrates ACT with OATS, is designed to prevent fraudulent and manipulative acts and practices by providing the Association with sufficient information to effectively surveil transactions in Nasdaq securities.

Nasdaq's proposal requires all trade reports for OATS-eligible securities, as defined by NASD Rule 6952(c), to identify the time of execution in hours, minutes, and seconds. The Commission believes that this requirement is reasonable, given that the NASD's OATS rules require that level of specificity for all "reportable events."⁹ Similarly, Nasdaq proposes to require a unique order identifier that satisfies

such parameters as established by the Association, as required by the OATS rules. In addition, Nasdaq proposes to codify the requirement that all ACT participants obtain and use a unique Market Participant Symbol, regardless of whether third parties transmit trade report information on their behalf. The Commission believes that Nasdaq's proposal, with respect to the specificity of time of execution, the unique order identifier, and the unique Market Participant Symbol, is designed to achieve uniformity between the NASD's rules governing OATS and ACT. The proposed uniformity between the NASD's rules governing ACT and OATS should assist the Association's efforts to more easily scrutinize transactions in Nasdaq securities. As a result, the Commission believes that the proposal is consistent with the Act.

Nasdaq also proposes to establish an implementation schedule for the proposed changes to the ACT rules that mirrors the schedule previously approved by the Commission for the OATS rules. The Commission believes that establishing a single implementation schedule may ease the compliance burdens on both member firms and Nasdaq.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. The Commission notes that the proposed rule change merely incorporates the changes to ACT necessitated by the Commission's approval of the OATS rules, for which the Commission has previously solicited comments. As a result, the Commission believes that the proposal raises no new issues of regulatory concern. For the foregoing reasons, the Commission believes that good cause exists, pursuant to Section 19(b)(2) of the Act,¹⁰ to approve the proposed rule change on an accelerated basis.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASD-98-60) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ Such "reportable events" include the origination, receipt, transmission, modification, cancellation, or execution of orders by NASD members relating to equity securities traded on Nasdaq. See Release No. 39729, *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

⁵ See Release No. 39729, *supra* note 3.

⁶ 15 U.S.C. 78o-3(b)(6).