

among Exchange members and other persons using Exchange facilities.

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

The proposed rule change will impose no burden on competition.

#### *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 with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>8</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of December 23, 2004, the Commission may summarily abrogate such proposed 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 the furtherance of the purposes of the Act.<sup>9</sup>

### **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-Amex-2004-102 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-102. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-Amex-2004-102 and should be submitted on or before January 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-128 Filed 1-4-05; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50930; File No. SR-NASD-2004-182]

### **Self-Regulatory Organizations, National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding Minor Modifications to the Nasdaq Opening Process for Nasdaq-Listed Stocks**

December 27, 2004.

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 December 13, 2004, 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 and II below, which items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as "non-controversial" under section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 modify the process for calculating the Nasdaq Official Opening Price ("NOOP"). There is no new proposed rule language for this proposal.

#### **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 previously proposed to create two new voluntary opening processes—the Modified Opening Process and the Nasdaq Opening Cross—that together constitute the beginning of the trading day for all Nasdaq-listed securities. The Commission approved that proposal on September 16, 2004.<sup>5</sup> Nasdaq has

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

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

<sup>5</sup> Securities Exchange Act Release No. 50405 (September 16, 2004) 69 FR 57118 (September 23, 2004) (approving SR-NASD-2004-071). The Commission notes that Nasdaq made minor amendments to the Modified Opening Process and the Nasdaq Opening Cross as of October 12, 2004, which were not reflected in this filing. The Commission has made changes to the filing to correct this oversight. See Securities Exchange Act

Continued

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission considers that period to have commenced on December 23, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change.

<sup>10</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.

identified a minor modification to the operation of the Nasdaq Opening Cross and Modified Opening Process that will improve the fair and orderly opening of the market in Nasdaq listed securities.

Specifically, Nasdaq proposes to modify the process for calculating the NOOP. Currently, the NOOP is equal to the reported price of the first trade executed by the execution functionality of the Nasdaq Market Center based upon orders that are in queue when Nasdaq begins trading at 9:30 a.m. ("Opening Match").<sup>6</sup> If there is no Opening Match within fifteen seconds after the system opens at 9:30, the NOOP is based upon the first, last sale eligible trade that is submitted to the trade reporting functionality of the Nasdaq Market Center.

Nasdaq proposes to change from fifteen to sixty seconds the length of time Nasdaq will wait for an Opening Match within Nasdaq's execution functionality before looking for a last sale eligible trade submitted to Nasdaq's trade reporting functionality. If the system executes a trade sooner than sixty seconds, the NOOP will be calculated at that time rather than waiting the full sixty seconds. By waiting up to sixty seconds, Nasdaq increases the likelihood that, in non-cross eligible stocks, a Nasdaq market center execution as opposed to an internalized trade will serve as the NOOP. Nasdaq believes that this outcome is consistent with the Act, more consistently fulfills the purpose of adopting the NOOP, and better serves investors.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>7</sup> in general, and with section 15A(b)(6) of the Act,<sup>8</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's current proposal is consistent with the NASD's obligations under these provisions of the Act because it will result in a more orderly opening for all Nasdaq stocks. The proposed rule change will create a fair, orderly, and unified opening for Nasdaq stocks, prevent the occurrence of locked and crossed markets in halted securities, and preserve price discovery and

transparency that is vital to an effective opening of trading.

### 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.

### 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.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) 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, it 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> At any time within 60 days of the filing of the 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to implement the proposed rule change which should help Nasdaq to maintain a fair and orderly market at the critical period of opening of trading. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup>

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6). Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change at least five business days before the date of filing of the proposed rule change.

<sup>11</sup> For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## 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 comments 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-2004-182 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-182. 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.html>). 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-2004-182 and should be submitted on or before January 26, 2005.

Release No. 50602 (October 28, 2004), 69 FR 64350 (November 4, 2004) (SR-NASD-2004-152).

<sup>6</sup> Securities Exchange Act Release No. 48997 (December 29, 2003), 69 FR 716 (January 6, 2004) (approving SR-NASD-2003-161).

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-126 Filed 1-4-05; 8:45 am]

**BILLING CODE 8010-01-M**

## DEPARTMENT OF STATE

[Public Notice 4947]

### 30-Day Notice of Proposed Information Collection: DS-10, Birth Affidavit, OMB Control Number 1405-0132

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Birth Affidavit.
- *OMB Control Number:* 1405-0132.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Bureau of Consular Affairs, CA/PPT/FO/FC.
- *Form Number:* DS-10.
- *Respondents:* U.S. citizens.
- *Estimated Number of Respondents:* 81,500 per year.
- *Estimated Number of Responses:* 81,500 per year.
- *Average Hours Per Response:* .25 (15 minutes).
- *Total Estimated Burden:* 20,375.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required To Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 5, 2005.

**ADDRESSES:** Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202-395-7860. You may submit comments by any of the following methods:

- *E-mail:* [Alexander\\_T.\\_Hunt@omb.eop.gov](mailto:Alexander_T._Hunt@omb.eop.gov). You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA, Department of State Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503.

- *Fax:* 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Margaret A. Dickson, U.S. Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20037, who may be reached on 202-663-2460 and at [dicksonma@state.gov](mailto:dicksonma@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* The Birth Affidavit is submitted in conjunction with an application for a U.S. passport and used by Passport Services to collect information for the purpose of establishing the citizenship of a passport applicant who has not submitted an acceptable United States birth certificate with his/her passport application.

*Methodology:* When needed, a Birth Affidavit is completed at the time a U.S. citizen applies for a U.S. passport.

Dated: November 19, 2004.

**Frank Moss,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 05-191 Filed 1-4-05; 8:45 am]

**BILLING CODE 4710-06-P**

## DEPARTMENT OF STATE

[Public Notice: 4948]

### 30-Day Notice of Proposed Information Collection: DS-60, Affidavit Regarding a Change of Name, OMB Control Number 1405-0133

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Affidavit Regarding A Change of Name.

- *OMB Control Number:* 1405-0133.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, CA/PPT/FO/FC.
- *Form Number:* DS-60.
- *Respondents:* U.S. citizens.
- *Estimated Number of Respondents:* 106,800 per year.
- *Estimated Number of Responses:* 106,800 per year.
- *Average Hours Per Response:* .25 (15 minutes).
- *Total Estimated Burden:* 26,700 hours per year.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 5, 2005.

**ADDRESSES:** Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202-395-7860. You may submit comments by any of the following methods:

- *E-mail:* [Alexander\\_T.\\_Hunt@omb.eop.gov](mailto:Alexander_T._Hunt@omb.eop.gov). You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA, Department of State Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503
- *Fax:* 202-395-6974

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Margaret A. Dickson, U.S. Department of State, CA/PPT/FO/FC, 2100 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20037, who may be reached on 202-663-2460 or at [dicksonma@state.gov](mailto:dicksonma@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* The Affidavit Regarding a Change of Name is submitted in conjunction with an application for a U.S. passport. It is used

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