

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-48442; File No. SR-NASD-2003-98)**

**September 4, 2003**

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Clarify Reporting Requirements for Transactions Conducted Through Electronic Communications Networks**

On June 19, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”) submitted to the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to clarify the reporting requirements applicable to transactions conducted through electronic communication networks (“ECNs”). On July 11, 2003, Nasdaq submitted Amendment No. 1 to the proposal.<sup>3</sup> The Federal Register published the proposal, as amended, for comment on August 4, 2003.<sup>4</sup> The Commission received one comment letter supporting the proposal.<sup>5</sup>

Nasdaq has stated that it allows ECNs to adopt different methodologies for reporting transactions to the Automated Confirmation Transaction Service (“ACT”) in order to accommodate their varying business needs. Nasdaq believes, however, that the absence of clearly defined rules on

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Letter from John M. Yetter, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated July 10, 2003 (“Amendment No. 1”). Nasdaq filed Amendment No. 1 to revise portions of the proposed rule text contained in the original filing.

4 Securities Exchange Act Release No. 48239 (August 4, 2003), 68 FR 45871.

5 See Letter from William O’ Brien, Chief Operating Officer, Brut, LLC to the Commission, dated August 25, 2003.

the ACT trade reporting requirements has created some confusion for ECNs and their subscribers. Nasdaq proposed these rule changes to provide greater clarity and certainty regarding the ACT trade reporting requirements for ECNs and their subscribers. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association<sup>6</sup> and, in particular, the requirements of Section 15A(b)(6) of the Act<sup>7</sup>, which requires, among other things, that the rules of a national securities association foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission believes that the proposed rules will provide ECNs and subscribers with necessary guidelines to facilitate their compliance with ACT trade reporting requirements. Therefore, the Commission finds the proposed rule changes are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed

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

7 15 U.S.C. 78o-3(b)(6).

8 15 U.S.C. 78s(b)(2).

rule change (SR-NASD-2003-98), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland  
Deputy Secretary

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9 17 CFR 200.30-3(a)(12).