

**Barbara Z. Sweeney**  
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October 2, 2003

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2003-147 – Amendment to the Delegation Plan to Remove  
NASDAQ Representation of NASD under the UTP Plan**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Kathleen A O'Mara, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8056; e-mail [kathleen.omara@nasd.com](mailto:kathleen.omara@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Enclosures

No. SR-NASD-2003-147  
Consists of 13 Pages  
October 2, 2003

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD’s Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) to remove The Nasdaq Stock Market, Inc.’s (“NASDAQ”) representation of NASD in the NASDAQ/Unlisted Trading Privileges Plan (“UTP Plan”). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO  
SUBSIDIARIES**

\* \* \* \* \*

**III. Nasdaq**

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., [the] NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. through g. No Change.

h. To administer [the Association’s] NASD’s involvement in National Market System Plans related to [Nasdaq/Unlisted Trading Privileges or] trading in

the third market for securities listed on a registered exchange. The scope of this administrative authority extends solely to the exercise of NASD's voting authority.

i. through o. No Change.

2. No Change.

B. through C. No Change

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the NASD-NASDAQ Conflict Committee of the Board of Governors of NASD at its meeting on July 31, 2003, which authorized the filing of the rule change with the SEC. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval.

NASD is requesting that this rule filing become effective simultaneously with SEC approval of an amendment to the UTP Plan to recognize NASDAQ as an independent UTP Plan participant. Accordingly, this rule change will take effect upon SEC approval of both this rule proposal and an amendment to the UTP Plan.

(b) Questions regarding this rule filing may be directed to Kathleen A. O'Mara, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD at (202) 728-8056.

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

(a) Purpose

In 1996, NASD delegated authority to NASDAQ to administer NASD's involvement in the National Market System Plans relating to NASDAQ/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.<sup>1</sup> This delegation was appropriate at the time because NASDAQ was the only facility for quoting and trade reporting in NASDAQ securities operated by NASD. Today, NASD also operates the Alternative Display Facility ("ADF"). The SEC, as a condition to the approval of NASDAQ's SuperMontage rule filing, required NASD to operate the ADF to ensure the existence of an alternative venue for NASD members to quote and trade report in NASDAQ securities. While the ADF is operating as a separate NASD facility for NASDAQ securities, NASD has delegated its participation rights, including the right to vote in the UTP Plan, to NASDAQ. Accordingly, the ADF is not separately represented in the UTP Plan and has no voting authority.

On April 22, 2003, SEC's Director of Market Regulation wrote to NASD's Chairman and Chief Executive Officer and requested that NASD exercise its own participation rights in the NASDAQ UTP Plan.<sup>2</sup> The SEC staff also requested that the UTP Plan be amended to recognize NASDAQ as a separate UTP Plan participant, thereby

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<sup>1</sup> Securities Exchange Act Rel. No. 37107 (Apr. 11, 1996), 61 FR 16948 (Apr. 18, 1996) (SR-NASD-96-16).

<sup>2</sup> Letter to Robert R. Glauber, Chairman and CEO, NASD, from Annette L. Nazareth, Director of Market Regulation, SEC, dated April 22, 2003.

ensuring separate independent participation by both NASD and NASDAQ in the UTP Plan.<sup>3</sup>

This proposed rule change effectuates the SEC Division Director's request by proposing to amend the Delegation Plan to retract the delegation of its UTP participation rights to NASDAQ. In addition, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with "NASD." NASD no longer refers to itself using its full corporate name, "the Association" or "the NASD." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. NASD is taking action to ensure it exercises its own participation rights in the NASDAQ UTP Plan.

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<sup>3</sup> Two amendments to the UTP Plan were proposed, that would allow NASDAQ to be recognized as a separate UTP Plan participant. The UTP Operating Committee voted on both proposed amendments on September 16, 2003. Neither amendment received the affirmative and unanimous vote necessary to constitute action by the Operating Committee to seek an amendment to the UTP Plan. NASDAQ also is required to pursue an exemption from SEC Rule 11Aa3-2. The SEC Division Director indicated in her letter to NASD that SEC staff is "prepared to approve the necessary UTP Plan amendments (or to initiate them on our own if the Nasdaq UTP Committee does not approve them) and to issue the necessary exemption."

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

NASD 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.

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: \_\_\_\_\_  
Barbara Z. Sweeney, Senior Vice President and  
Corporate Secretary

Date: October 2, 2003

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2003-147)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD's Delegation Plan and the UTP Plan

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 \_\_\_\_\_, 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, which Items have been prepared by NASD. 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

NASD is proposing a rule change to amend NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") to remove The Nasdaq Stock Market, Inc.'s ("NASDAQ") representation of NASD in the NASDAQ/Unlisted Trading Privileges Plan ("UTP Plan"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO  
SUBSIDIARIES**

\* \* \* \* \*

**III. Nasdaq**

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., [the] NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. through g. No Change.

h. To administer [the Association's] NASD's involvement in National Market System Plans related to [Nasdaq/Unlisted Trading Privileges or] trading in the third market for securities listed on a registered exchange. The scope of this administrative authority extends solely to the exercise of NASD's voting authority.

i. through o. No Change.

2. No Change.

B. through C. 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, NASD 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

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specified in Item IV below. 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

(a) Purpose

In 1996, NASD delegated authority to NASDAQ to administer NASD's involvement in the National Market System Plans relating to NASDAQ/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.<sup>3</sup> This delegation was appropriate at the time because NASDAQ was the only facility for quoting and trade reporting in NASDAQ securities operated by NASD. Today, NASD also operates the Alternative Display Facility ("ADF"). The SEC, as a condition to the approval of NASDAQ's SuperMontage rule filing, required NASD to operate the ADF to ensure the existence of an alternative venue for NASD members to quote and trade report in NASDAQ securities. While the ADF is operating as a separate NASD facility for NASDAQ securities, NASD has delegated its participation rights, including the right to vote in the UTP Plan, to NASDAQ. Accordingly, the ADF is not separately represented in the UTP Plan and has no voting authority.

On April 22, 2003, SEC's Director of Market Regulation wrote to NASD's Chairman and Chief Executive Officer and requested that NASD exercise its own participation rights in the NASDAQ UTP Plan.<sup>4</sup> The SEC staff also requested that the

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<sup>4</sup> Letter to Robert R. Glauber, Chairman and CEO, NASD, from Annette L. Nazareth, Director of

UTP Plan be amended to recognize NASDAQ as a separate UTP Plan participant, thereby ensuring separate independent participation by both NASD and NASDAQ in the UTP Plan.<sup>5</sup>

This proposed rule change effectuates the SEC Division Director's request by proposing to amend the Delegation Plan to retract the delegation of its UTP participation rights to NASDAQ. In addition, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with "NASD." NASD no longer refers to itself using its full corporate name, "the Association" or "the NASD." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. NASD is taking action to ensure it exercises its own participation rights in the NASDAQ UTP Plan.

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Market Regulation, SEC, dated April 22, 2003.

<sup>5</sup> Two amendments to the UTP Plan were proposed, that would allow NASDAQ to be recognized as a separate UTP Plan participant. The UTP Operating Committee voted on both proposed amendments on September 16, 2003. Neither amendment received the affirmative and unanimous vote necessary to constitute action by the Operating Committee to seek an amendment to the UTP Plan. NASDAQ also is required to pursue an exemption from SEC Rule 11Aa3-2. Two amendments to the UTP Plan were proposed, that would allow NASDAQ to be recognized as a separate UTP Plan participant. The UTP Operating Committee voted on both proposed amendments on September 16, 2003. Neither amendment received the affirmative and unanimous vote necessary to constitute action by the Operating Committee to seek an amendment to the UTP Plan. NASDAQ also is required to pursue an exemption from SEC Rule 11Aa3-2. The SEC Division Director indicated in her letter to NASD that SEC staff is "prepared to approve the necessary UTP Plan amendments (or to initiate them on our own if the Nasdaq UTP

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD 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 publishes 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, 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

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Committee does not approve them) and to issue the necessary exemption.”

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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland  
Deputy Secretary