

## SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 20a-1, SEC File No. 270-132, OMB Control No. 3235-0158]

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title of the collection of information is "Rule 20a-1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents and Authorizations." Rule 20a-1(a) requires that the solicitation of a proxy, consent or authorization with respect to a security issued by a registered fund be in compliance with Regulation 14A (17 CFR 240.14a-1 to 14a-104), Schedule 14A (17 CFR 240.14a-101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). Rule 20a-1(b) requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for registered investment company proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that approximately 1,000 registered investment companies are required to file one proxy statement annually. The total annual reporting and

recordkeeping burden of the collection of information is estimated to be approximately 106,200 hours (1,000 responses  $\times$  106.2 hours per response).

Rule 20a-1 does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 2002.

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46822; File No. SR-NASD-2002-152]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding Trade Throughs and Locked Markets in the Nasdaq InterMarket

November 13, 2002.

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 October 25, 2002, 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" or "SEC") the proposed rule change as described in Items I and II below, which Items

have been prepared by Nasdaq. On November 6, 2002, Nasdaq filed an amendment to the proposed rule change.<sup>3</sup> On November 12, 2002, Nasdaq filed another amendment to the proposed rule change.<sup>4</sup> 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 the Substance of the Proposed Rule Change

Nasdaq is proposing to change NASD Rule 5262 ("Trade-Throughs") to conform its rule to the Commission order of August 28, 2002,<sup>5</sup> which establishes a limited exemption from the trade through provisions of the ITS Plan. In addition, Nasdaq is proposing to change NASD Rule 5263 ("Locked or Crossed Markets"), which addresses locked and crossed markets in exchange-listed securities, to conform its rule more closely with the locked markets rule contained in the ITS Plan. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 5262. Trade Throughs

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES security, shall avoid purchasing or selling such security, whether as principal or agent, at a price which is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker ("trade-through"), unless the following conditions apply:

(1)-(8) No Change.

(9) *The transaction involves QQQs, DIAMONDS, and SPDRs, and the execution occurs at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This*

<sup>3</sup> See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 makes a technical amendment to the rule text of the proposal.

<sup>4</sup> See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Lisa N. Jones, Attorney, Division, Commission ("Amendment No. 2"). Amendment No. 2 makes a further technical amendment to the rule text of the proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin the date of the original proposed rule change, October 25, 2002.

<sup>5</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (granting a *de minimis* exemption for transactions in certain exchange-traded funds from the trade through provisions of the Intermarket Trading System ("ITS") Plan) ("Exemptive Order").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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