

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46532; File No. SR-NASD-2002-118]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Extension of a Pilot Program Making Available Certain Nasdaq Services and Facilities Until 6:30 p.m. Eastern Time

September 23, 2002.

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 30, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 proposes to extend through January 31, 2003 a pilot program making available several Nasdaq services and facilities until 6:30 P.M. Eastern Time. Nasdaq has designated this proposal as non-controversial and requests that the Commission waive both the five-day notice requirement and 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.⁵ Nasdaq proposes no substantive changes to the pilot program other than extending its operation through January 31, 2003.

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 proposes to extend through January 31, 2003 its current pilot program that makes available certain Nasdaq systems and facilities until 6:30 P.M. Eastern Time.⁶ The Commission originally approved the pilot on October 13, 1999.⁷ The pilot will continue to operate under the same terms and conditions as set forth in the Commission's original approval order, including mandating 90-second trade reporting until 6:30 P.M. Eastern Time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general and with section 15A(b)(6) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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

Written comments were neither solicited nor received.

⁶ Nasdaq has also filed with the Commission a proposed rule change pursuant to Section 19(b)(2) of the Act to make Nasdaq's after-hours pilot program permanent. See SR-NASD-2002-119. Under this proposal, the pilot would become permanent under the same terms and conditions as set forth in the Commission's order approving the pilot. See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999).

⁷ See Securities Exchange Act Release No. 42003 (October 13, 1999); 64 FR 56554 (October 20, 1999).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

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, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,¹¹ the Commission may summarily abrogate the 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 five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the program to operate without interruption through January 31, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹²

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 20549-0609. 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

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4(f)(6).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

⁵ 17 CFR 240.19b-4(f)(6).

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 the NASD. All submissions should refer to file number SR-NASD-2002-118 should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46534; File No. SR-NASD-2002-86]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish and Set a Fee for a New Data Feed for the Nasdaq InterMarket

September 23, 2002.

On June 27, 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"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make available a new data feed of market participant quotations from the Nasdaq InterMarket, Nasdaq's facility for over-the-counter trading of exchange-listed securities, and set a fee for purchase of that data feed. The proposed rule change was published for notice and comment in the **Federal Register** on August 20, 2002.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association⁴ and, in particular, the requirements of section 15A(b)(5)⁵ of

the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. The Commission believes it is important that Nasdaq provide real-time market participant quotations, and believes that the iM Quotes data feed should provide broker-dealers and market data vendors with access to real-time InterMarket participant quotations to that effect. Additionally, the Commission believes that the fees Nasdaq will charge for the data feed are reasonable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁶, that the proposed rule change (SR-NASD-2002-86) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-24700 Filed 9-27-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46527; File No. SR-NYSE-2002-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Automatic Execution Facility (NYSE Direct+)

September 20, 2002.

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 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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

The proposed rule change consists of amendments to Exchange Rules governing NYSE Direct+® ("Direct+"). The rule amendments propose to: (i) Amend Rule 13 to provide for a one-year pilot program to expand Direct+

order size eligibility for Investment Company Units, including Exchange-Traded Funds ("ETFs"), and Trust Issued Receipts, such as Holding Company Depositary Receipts ("HOLDRs");³ (ii) amend Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend Rule 1005 to reflect that the rule applies to ETFs and HOLDRs. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

Rule 13: Definitions of Orders

* * * * *

Auto Ex Order

An auto ex order is a limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000-1005.

Pursuant to a one-year pilot program, orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200) may be entered as limit orders in an amount greater than 1099 shares. The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one week advance notice to the Exchange's membership.

* * * * *

NYSE DIRECT+™: RULES GOVERNING AUTOMATIC EXECUTION OF LIMIT ORDERS OF A SPECIFIED SIZE

Rules 1000-1001: No change.

Rule 1002: Availability of Automatic Execution Feature

Orders designated as "auto ex" in a particular stock, *Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200)* shall be eligible to receive an automatic execution if entered after the Exchange

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46350 (August 14, 2002), 67 FR 54003.

⁴ 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).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal applies to the broader categories of Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), among which ETFs and HOLDRs are a part. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Terri Evans, Assistant Director, Sonia Patton, Special Counsel, and Steve Williams, Economist, Division of Market Regulation, Commission, September 18, 2002.