

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40689; File No. SR-NASD-98-73]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

November 19, 1998.

On October 1, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 7010 to make permanent its current monthly pilot fee for subscribers who receive Nasdaq Level 1 and Last Sale data through automated voice response services.

The proposed rule change appeared in the **Federal Register** on October 20, 1998.³ The Commission received no comments concerning the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to make permanent its \$21.25 monthly per port fee for subscribers who receive Nasdaq Level 1 service through automated voice response services.⁴ These services provide callers with automated voice access to real-time Nasdaq pricing information. The monthly \$21.25 fee

has been in effect as a pilot fee for over 11 years and was originally based on a formulation of a \$5.00 premium above the combined \$16.25 Level 1/Last Sale rate in effect at that time. This fee has not increased despite a subsequent increase of Level 1/Last Sale Rates to the current \$20.00 per month level. Given the continued usage of voice-based quote access services,⁵ Nasdaq believes that the charge for such services should now be made a permanent part of its fee structure.

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)⁶ and 15A(b)(6)⁷ of the Act.⁸ The Commission believes the proposal is consistent with these provisions of the Act because the fee is reasonable and equitable and will apply in a non-discriminatory manner to all member firms that use the Nasdaq Level 1 automated voice response service.

The proposed fee has been in effect since the pilot's inception 11 years ago.⁹ During this time members have paid this fee without complaint. Moreover, the NASD has kept the per port fee constant despite a \$3.75 increase in Level 1/Last Sale rates. Thus, the Commission supports this fee becoming a permanent part of the NASD's fee structure. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-98-73) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

⁵ There are currently 7,629 voice ports in service.

⁶ Section 15A(b)(5) requires that an association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78o-3(b)(5).

⁷ Section 15A(b)(6) requires that an association's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78o-3(b)(6).

⁸ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The Commission believes that disseminating real-time pricing information through automated voice response systems enhances market efficiency and promotes competition among the markets. 15 U.S.C. 78c(f).

⁹ The Commission notes that 11 years is a significant length of time to determine a pilot's viability. The Commission believes that gathering and analyzing market data to assess such factors as market interest and profitability should be done within a substantially shorter time frame.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

[FR Doc. 98-31585 Filed 11-25-98; 8:45 am]

BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40688; File No. SR-NYSE-97-31]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

November 18, 1998.

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 November 9, 1998, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to the proposed rule change as describe 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 Amendment No. 2 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing the second amendment to its proposed rule change to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The test of Amendment No. 2 to the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

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

In its filing with the Commission, the NYSE 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. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Rel. No. 40546 (October 13, 1998), 64 FR 56055. There was a misprint in the **Federal Register** version of this release. The **Federal Register** contained the following sentence: "Nasdaq believes that the charge for such services should *not* be made a permanent part of its fee structure." *Id.* at p. 56056 (emphasis added). The correct text, as submitted to the **Federal Register** by the Commission, with emphasis added, is as follows: "Nasdaq believes that the charge for such services should *now* be made a permanent part of its fee structure." This sentence is not in the **Federal Register** release. The correction was published on November 17, 1998, in Securities Exchange Act Rel. No. 40546, 63 FR 63967 (November 17, 1998).

⁴ A vendor's voice port count is defined as the maximum number of callers capable of accessing Nasdaq data at any given time. For example, if a vendor's voice port count is 100 (i.e., capable of handling a maximum of 100 callers at any given time) then the fee accessed would be \$2,125 (\$21.25 x 100). Conference call on October 6, 1998, between Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq, and Mignon McLemore, Attorney and Robert B. Long, Attorney, Division of Market Regulation, Commission.

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

1. Purpose

On November 17, 1997, the Exchange submitted the proposed rule change, proposing to amend NYSE Rule 500, which states the procedures a NYSE-listed company must follow before voluntarily delisting its securities from the Exchange. On December 3, 1997, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission. The amended proposal was published for comment in the **Federal Register** on December 10, 1997.³

NYSE Rule 500 currently requires holders of 66 percent of a security to approve a company's decision to delist the company's securities from the Exchange, with less than ten percent of the individual holders objecting to the delisting. As originally proposed, the amended rule would have permitted a domestic issuer to delist stock if it obtained the approval of: (1) A majority of the company's full board of directors; and (2) the company's audit committee. The issuer then would have been required to provide shareholders with between 45 and 60 calendar days' notice of the delisting. A non-U.S. issuer would have had to obtain board approval to delist its stock. A non-U.S. issuer also would have had to provide holders with reasonable notice of its intention to delist, which would have required the issuer to send written notice to U.S. holders and to follow home-country practice to provide notice to non-U.S. holders.

In response to the Commission's request for comment on the original proposal, the Commission received a number of comments both for and against the proposal. In response to those comments and discussions with Commission staff, the Exchange now proposes the following amendments to the original proposal:

- Permit approval by a company's board of directors according to applicable state law requirements on majority votes (generally the majority of a quorum), rather than requiring approval by a majority of the entire board. The Exchange would continue to require audit committee approval.
- Amend the notice provision to require U.S. companies to provide actual written notice to no less than 35 of their largest record holders (rather than all holders). A foreign issuer would

have to provide such notice to its 35 largest U.S. shareholders.

- Require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting.
- Shorten the minimum waiting period from 45 calendar days to 20 business days, and change the maximum waiting period from 60 calendar days to 60 business days, with the ability of companies to extend the period, subject to approval by the Exchange.

The Exchange believes that new Rule 500, as proposed to be amended, will continue to provide investors with adequate procedural protections in the delisting process while providing listed companies with greater flexibility in this area.

2. Statutory Basis

The Exchange believes Amendment No. 2 to the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,⁴ which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposal does not impose 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

In adopting the original proposal to amend Rule 500, the Exchange consulted with numerous Board and advisory committees, pension funds and other Exchange constituents. The Exchange also has informally discussed the current proposals with various of these constituencies.

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 the 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 Amendment No. 2, including whether Amendment No. 2 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. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-31 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-31582 Filed 11-25-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40686; File No. SR-PCX-98-52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

³ Securities Exchange Act Release No. 39394 (December 3, 1997) 62 FR 65116.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).