

to transmit price information and other data to Nasdaq over the Internet.

As part of the upgrade, Nasdaq created software to protect the information transmitted over the Internet. Each MFQS subscriber will be given a unique logon identification which will allow the subscribers to securely transmit price information and other data to Nasdaq. A logon identification can only be used by one person at a time; if a subscriber wants two people to simultaneously submit its pricing information, the subscriber must order two logon identifications.

According to Nasdaq, the Internet security software was also developed to protect sensitive information transmitted to the NasdaqTrader.com system. In the future, Nasdaq indicates that it may also use the Internet security system with other NASD web-based services.

Nasdaq estimates that the MFQS's share of the on-going costs to administer and maintain the Internet security system will be \$239,000. To pay for the administrative and maintenance costs of the MFQS, Nasdaq proposed to charge \$75 a month for each logon identification a subscriber orders. According to Nasdaq, the fee will only be used to cover the administrative and maintenance costs of the Internet security software; Nasdaq maintains that the fee will not be used to pay for the development costs of the software.

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal creating a \$75 logon identification fee for subscribers of Nasdaq's MFQS. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act⁴ and the rules and regulations thereunder that govern the NASD.⁵ In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.⁶

Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act in that it provides 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. In its proposal, the Association sought to charge MFQS subscribers \$75 a month for each logon identification fee the subscriber orders.

The Commission believes that this charge provides for the reasonable allocation of fees among those who use the system. MFQS subscribers, who benefit from the Internet security system, are the only ones who are charged with the fee. Moreover, Nasdaq represented to the Commission that the fee will only be used to cover the maintenance and administrative costs of operating the Internet security system and not to cover the development costs of the security system. Nasdaq also represented to the Commission that the fee will be allocated between the MFQS and the NasdaqTrader.com service based on each service's proportionate usage of the security system.⁷ Because the fee is only assessed against those who benefit from the Internet security system and the fee will only be used to cover the MFQS's portion of the on-going operational costs of the security system, the Commission believes that the NASD has provided for the equitable allocation of fees among persons using a system which the Association operates and controls.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.⁸ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-98-70) be and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40698; File No. SR-NYSE-98-40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program to Amend Paragraph 902.02 of the Exchange's Listed Company Manual and Requesting Permanent Approval of the Pilot Program

November 20, 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 20, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposed rule change instituting a three-month pilot program pending the Commission's review of the proposed rule change.

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

The Exchange proposes to implement a three-month pilot program (the "Pilot") to amend Paragraph 902.02 of the Exchange's Listed Company Manual (the "Manual"). In addition, the Exchange seeks permanent approval of the proposed amendments to Paragraph 902.02 of the Manual. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, 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

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78s(b).

⁶ 15 U.S.C. 78o-3.

⁷ Along with SR-NASD-98-70, the NASD also filed SR-NASD-98-71. The NASD has withdrawn SR-NASD-98-71. See Securities Exchange Act Release No. 40658 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (notice of withdrawal of SR-NASD-98-71).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78(c)f.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item III below. The NYSE 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

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange seeks to adopt a reduced fee structure for mergers between an NYSE-listed company and a non-NYSE listed company, other than for those considered to be "back door listings" pursuant to Paragraph 703.08(E) of the Manual.

The Exchange proposes to reduce the basic initial listing fee such that the fee is 25% of the applicable basic initial listing fee for the above specified listings that occur within 12 months of the merger. However, if the merger and subsequent listing occur within 12 months of the initial listing of the NYSE-listed company, the Exchange proposes to reduce the basic initial listing fee for the merged entity to the lesser of (a) 25% of the applicable basic initial listing fee for the merged entity; or (b) the full applicable basic initial listing fee for the merged entity less the fee already paid by the NYSE-listed company at the time of its initial listing.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) ³ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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. 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 in the Commission's Public Reference Room at 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-98-40 and should be submitted by December 21, 1998.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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.

V. Commission's Findings and Order Granting Partial Accelerated Approval of 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 exchange, and in particular, with the requirements of section 6 of the Act.⁴ More specifically, the Commission believes that the portion of the proposed rule change dealing with the three-month pilot is consistent with section 6(b)(4) of the Act⁵ which requires that

the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.⁶ The Commission believes that the proposal may ease the financial burdens of merger transactions with Exchange-listed issuers, thus facilitating capital formation and competition among exchanges and other markets.

The Commission finds good cause for approving the three-month pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This accelerated approval will permit Exchange-listed issuers to take advantage of the Exchange's initial listing fee reduction program on an expedited basis while the Commission undertakes a more exhaustive review of the proposal. Accordingly, the Commission believes that good cause exists, consistent with section 6(b)(5) and section 19(b)(2) of the Act, to grant accelerated approval to the three-month pilot.⁷ The Commission notes, however, that approval of the pilot should not suggest a predisposition regarding the ultimate approval of the proposal on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-98-40) is approved on an accelerated basis until February 19, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40695; File No. SR-NYSE-98-27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Arbitration Rules

November 19, 1998.

I. Introduction

On September 8, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission

⁶ In approving the three-month pilot, the Commission has considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78f(b)(4).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).