

displayed bid or offer, as appropriate. Currently, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. This "trade or fade" policy is codified in paragraph (b) of Rule 8.51.

The Exchange is also proposing to amend Rule 8.51 to deny the firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and that are represented at the trading station at approximately the same time and that cumulatively exceed the firm quote requirement for that particular class of options. For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to the floor broker in a crowd to by ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another. Under the proposed new paragraph (a)(3) of Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change that market pursuant to the terms of the "trade or fade" policy set forth in paragraph (b) of the Rule.

The Exchange believes that customers or broker-dealers can attempt to circumvent the limits of the firm quote protection by submitting orders at the same time that are in many respects economically very similar. If the market-makers in a crowd were required to fill each of these orders at the displayed quotes without the possibility of refreshing those quotes they would essentially be responsible for honoring the displayed quotes in the crowd at a level beyond the intended protection and would be subjected to undue risk. The potential risk will be even greater than it is today with the expansion in the category of orders that will be entitled to firm quote protection. In addition, the potential risk will be increased if the firm quote limit were to be raised. The Exchange recently submitted a filing with the Commission proposing to expand the allowable firm quote limit up to 50 contracts. The Exchange believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time is the best way to ensure the

viability of the expansion of the firm quote protection that the Exchange has proposed in both this filing (with respect to an expansion in the category of orders entitled to the firm quote guarantee) and in SR-CBOE-98-53 (with respect to an expansion in the allowable firm quote contract limit).

The Exchange also proposes to amend paragraph (b) of Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders now subject to the firm quote guarantee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁵ in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 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.,

⁵ 15 U.S.C. 78f(b)(5).

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 provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-99-21 and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-41571; File No. SR-NASD-99-22)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Limited Usage Service Fees

June 28, 1999.

On April 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "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 eliminate its Limited Usage Service Fee.

The proposed rule change was published for comment in the **Federal Register** on May 28, 1999.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to amend NASD Rule 7010 to eliminate its Limited Usage

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41432 (May 20, 1999), 64 FR 29075.

Service Fee.⁴ Currently, professional market participants may obtain, through an approved portable quotation device, Nasdaq Level I and Last Sale Information on up to 250 Nasdaq securities for a monthly fee of \$6.00. The fee currently has approximately 95 subscribers and has never exceeded 200 users during its existence. In light of this low participant usage and the burdens associated with administering the Limited Usage Service, Nasdaq has determined to discontinue this service and its related fee. Nasdaq notes that the information provided through the Limited Usage Service will still be widely available to professionals through numerous other mediums and vendors.

The Commission finds that the proposed rule change is consistent with the requirements of the Act⁵ and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal is consistent with the requirements of sections 15A(b)(5)⁶ and (6)⁷ because the proposed rule change is designed to provide for the equitable allocation of reasonable fees among those using the NASD's facilities or systems and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-99-22) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁴ This fee was established on a pilot basis on January 3, 1984. See Securities Exchange Act Release No. 20522 (January 3, 1984), 49 FR 1440 (January 11, 1984).

⁵ The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The Commission finds that the proposed rule change increases efficiency by refining the fee structure and lessening confusion about available services. The Commission also finds that the proposed rule change is not discriminatory and does not impinge on competition because the information provided through the Limited Usage Service is still widely available through other mediums. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41568; File No. SR-NASD-98-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No.7 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

June 28, 1999.

I. Introduction

On March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to: (a) Implement, on a pilot basis, new Primary Nasdaq Market Maker ("PMM") standards for all Nasdaq National Market ("NNM") securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.³ The Short Sale Rule pilot and the suspension of existing PMM standards was subsequently extended until June 30, 1999.⁴

On June 22, 1999, Nasdaq proposed to (1) continue to suspend the current PMM standards until December 31, 1999, and (2) extend the NASD's Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) until December 31, 1999.⁵

Background

Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule

4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of the SEC Order Handling Rules and what some perceive as a concurrent move toward a more order-driven, rather than a quote-driven, market raised questions about the continued relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.⁶ Currently, all market makers are designated as PMMs.

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in what may be an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the NASD's Short Sale Rule. The NASD now proposes to extend the current suspension of the existing PMM standards.

In light of a substantial number of comments on the proposed new PMM standards, Nasdaq staff in August 1998 convened a subcommittee to develop new standards. Nasdaq expects that it will file an amendment to SR-NASD-98-26 to incorporate the new PMM standards that currently are being developed by the subcommittee, or in the alternative, that it will withdraw SR-NASD-98-26 and will submit the new PMM standards as a new filing.

For the reasons discussed below, the Commission has determined to grant accelerated approval to Nasdaq's request, in Amendment No. 7, to continue to suspend the current PMM standards and to extend the NASD's Short Sale Rule Pilot until December 31, 1999.

II. Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of

⁶ See Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Exchange Act Release No. 39818 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998); Exchange Act Release No. 39936 (April 30, 1998); 63 FR 25253 (May 7, 1998) (extending suspension through July 1, 1998); Exchange Act Release No. 40140 (June 26, 1998) 63 FR 36464 (July 6, 1998) (extending suspension through October 1, 1998); Exchange Act Release No. 40485 (September 24, 1998) 63 FR 52780 (October 1, 1998) (extending suspension through March 31, 1999); Exchange Act Release No. 41195 (March 19, 1999) 64 FR 14778 (March 26, 1999) (extending suspension through June 30, 1999).