

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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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

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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998).

⁴ See Exchange Act Release No. 41195 (March 19, 1999) 64 FR 14778 (March 26, 1999).

⁵ See letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated June 21, 1999.

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).

existing PMM standards to allow more time to refine the PMM standards.

The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

NASD Rule 3350

(a)–(k) No Changes.

(l) This Rule shall be in effect until [June 30, 1999] *December 31, 1999*.

III. Discussion

After careful consideration, the Commission has found, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until December 31, 1999, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6) ⁷ of the Exchange Act. Section 15A(b)(6) requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade. The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission and the NASD review the operation of revised PMM standards. Because the Commission's ultimate stance on the Short Sale Rule may be affected, in part, by the operation of revised PMM standards, it is reasonable to keep the Short Sale Rule pilot in place while work continues on the PMM standards. Furthermore, it is judicious, in the short term, to avoid reintroducing the previous PMM standards prior to the implementation of a new PMM pilot.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the NASD's Short Sale Rule, any market maker exemptions to that rule, and the proposed new PMM standards. The Commission recognizes that the Short Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with any relevant information about the

practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards for a brief period prior to implementing a new PMM pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 7, including whether the proposed Amendment is consistent with the Exchange 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 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 No. SR–NASD–98–26 and should be submitted by July 27, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,⁸ that Amendment No. 7 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to December 31, 1999, be and hereby is approved on an accelerated basis.⁹

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving Amendment No. 7, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(F).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41567; File No. SR–PCX–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Fines for Damage of Exchange Property

June 28, 1999.

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 June 4, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 21, 1999, the Exchange filed Amendment No. 1. 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 Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 10.13 to include fines for the intentional or reckless use and/or damage of Exchange equipment. The text of the proposed rule change is available at the Office of the Secretary, PCX 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 PCX 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁷ 15 U.S.C. 78o–3(b)(6).