

the requirements of the Act.⁴ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)⁵ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act. In particular, Amex represented that splitting the Chairman/CEO functions will allow the CEO to focus on the operations of the Exchange. The Commission agrees and believes that the proposal should allow the CEO to devote more time to the day-to-day operations of the Exchange.

In approving this rule change, however, the Commission notes that the proposed language now permits the Chairman to be affiliated with a member of the Exchange if separate persons hold the Chairman and CEO positions. As the Commission stated in the order approving the International Securities Exchange LLS's application for registration as a national securities exchange, the affiliation of the Chairman with one of the Exchange's members implicates certain conflicts of interest, or at least gives the appearance of such conflicts.⁶ Amex represented that it made this change to make its corporate governance structure consistent with other NASD entities, such as NASD Regulation, which in 1999 had a Chairman who was affiliated with an NASD member. Amex also represented that the change, other than splitting the Chairman and CEO positions, will have no substantive effect on the operation of the Exchange. Nevertheless, if Amex chooses to split the Chairman/CEO positions and has a Chairman affiliated with a member, Amex's Chairman should avoid actual or apparent conflicts of interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-99-25) is approved.

⁴ In addition, pursuant to Section 3(f) of the Act, 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. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (File No. 10-127).

⁷ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

[FR Doc. 00-9919 Filed 4-19-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42672; File No. SR-NASD-00-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Its Transaction Credit Pilot Program

April 12, 2000.

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 March 6, 2000, 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 ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed an amendment to the proposed rule change on March 31, 2000,³ which amendment replaces and supersedes the original proposal. 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

Nasdaq is filing a proposed rule change amending NASD Rule 7010 to extend Nasdaq's transaction credit pilot program for an additional six months for Tape A reports and to discontinue the pilot program for Tape B reports. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

7010 System Services

(a)-(b) No Change.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Katherine A. England, Assistant Director, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated March 30, 2000 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the proposed rule change.

(c)(1) No Change.

(2) *Exchange-Listed Securities Transaction Credit.* For a pilot period, qualified NASD members that trade securities listed on the NYSE [and Amex] in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. [To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter.] If an NASD member is so qualified to earn credits based [either] on its Tape A activity, [or its Tape B activity, or both,] that member may earn credits from [one or both (as the case may be, depending on the qualification standards) pools] *the Tape A pool* maintained by the NASD, [each] *such* pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for [each of] Tape A [and Tape B] transactions. A qualified NASD member may earn credits from [such pools] *the Tape A pool* according to the member's pro rata share of the NASD's over-the-counter trade reports in [each of] Tape A [and Tape B] for each calendar quarter starting with [July 1, 1999, and ending with the calendar quarter starting on October 1, 1999] *January 1, 2000, and ending with the calendar quarter starting on April 1, 2000.*

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 is proposing to extend, for an additional six months, its pilot program to provide a transaction credit⁴ to NASD members that exceed certain levels of over-the-counter ("OTC") trading activity in securities listed on the New York Stock Exchange ("NYSE"). In addition, Nasdaq is proposing to discontinue the pilot program for OTC trading in securities listed on the American Stock Exchange ("Amex"). The NASD established its transaction credit pilot program to assist in finding ways to lower investor costs associated with trading listed securities, and to respond to steps taken by other exchanges that compete with Nasdaq for investor order flow in those issues.

Background. Nasdaq's Third Market is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the NYSE and the Amex. The Third Market competes with the regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects quotations from broker-dealers that trade these securities OTC and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from broker-dealers trading these securities in the OTC market and provides the trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA, the NASD earns a share of the revenue from trades that it reports on behalf of those broker-dealers in NYSE-listed securities ("Tape A") and in Amex-listed securities ("Tape B"). Nasdaq created the credit pools for qualified pilot participants from the NASD's share of these revenues.

Nasdaq's transaction credit pilot program is intended to lower costs for Third Market Makers and their customers who execute trades in exchange-listed stocks through NASD members and Nasdaq facilities. The NASD believes that lowering the cost of trading increases competition among market centers trading listed securities. Continuation of the pilot will allow

Nasdaq to continue to evaluate the efficacy of its revenue sharing model and continue to effectively compete for the retention of Third Market participants with other regional exchanges that have adopted similar revenue distribution methodologies.⁵

Pilot Program. Under the original transaction credit pilot program,⁶ Nasdaq calculated two separate pools of revenue from which credits can be earned. The first represented 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the Third Market for dissemination by the CTA ("Tape A"). The other represented 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Under the proposal, the Tape A calculation pool will remain at the same 40% level, and the pool of revenue previously generated from gross revenue received from the CTA for reporting Amex trades will be discontinued.

Eligibility for transaction credits during the pilot's extension will be based upon concurrent quarterly trading activity in NYSE-listed securities. For example, a Third Market participant that recently entered the market for Tape A securities during the first quarter of 2000 and printed an average of 500 daily trades of Tape A securities during the time it is in the market, or that averaged 500 daily Tape A prints during the entire quarter, would be eligible to receive transaction credits based on its trades during the first quarter. As in the original pilot, only those NASD members who continue to average an appropriate daily execution level during the term of the pilot's extension would be eligible for transaction credits and thus able to receive a pro-rata portion of the 40% revenue calculation pools.⁷ The NASD chose to create these thresholds to permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the

threshold and to encourage NASD members to actively trade in these securities.

As before, a fully-qualifying NASD member's transaction credit will be determined by taking its percentage of total Third Market transactions during the applicable calculation period and providing an equivalent percentage from the appropriate Tape A calculation pool. Thus, for each calendar quarter commencing with the calendar quarter that began on January 1, 2000, the NASD will measure a qualified member's Tape A trade reports for that calendar and create a credit for the member based upon this activity. For example, if a qualifying NASD member's transactions represent 10% of the NASD's Tape A transactions, that member would receive a 10% share of the Tape A 40% calculation pool. Unlike the original pilot, however, the transaction credit will be available only to NASD members that trade NYSE-listed securities in the Third Market in order to focus the competitive thrust of this initiative toward the NYSE during the time the NASD remains the sole shareholder of Nasdaq.

Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a national market system and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change is also consistent with Section 15A(b)(5)⁹ 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 that the Association operates or controls.

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.

⁵ Both the CHX and the CSE have established similar programs. See Securities Exchange Act Release Nos. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR-CHX-97-01) and 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR-CSE-97-12).

⁶ See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR-NASD-99-13). The original pilot was effective from October 1, 1998 through June 30, 1999. Nasdaq subsequently extended the pilot through December 31, 1999. See Securities Exchange Act Release No. 42095 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR-NASD-99-59).

⁷ The qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the Third Market and competing for order flow.

⁴ The transaction credit can be applied to any and all charges imposed by the NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78o-3(b)(5).

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

Nasdaq did not solicit or receive written comments on the proposed rule change.

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

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ in that it establishes or changes a due, fee or other charge imposed by the Association. At any time within 60 days¹² of the filing of such rule change, the Commission may summarily abrogate such 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.¹³

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 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 the File No. SR-NASD-00-10 and should be submitted by May 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,

Secretary.

[FR Doc. 00-9878 Filed 4-19-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42671; File No. SR-NYSE-00-12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Original and Continued Listing Standards for Affiliated Companies

April 12, 2000.

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 March 15, 2000, 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 Exchange. On March 28, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On April 12, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NYSE clarified the method of analysis of a listed company's good-standing status. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division", SEC, dated March 24, 2000 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange proposed to apply the changes proposed in Amendment No. 1 to paragraph 102.01C, U.S. companies, to paragraph 103.01B, Non-U.S. companies. The Exchange also proposed to delete the proposed rule text from paragraph 802.01C which would have applied the Price Criteria standard to a situation which is the subject of a separate proposed rule change by the Exchange. Furthermore, the Exchange changed their request for accelerated approval to April 12 from April 10, 2000, and the Exchange expanded their explanation of the proposed rule change in the purpose section of the filing. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, SEC, dated April 11, 2000 ("Amendment No. 2").

rule change and Amendment Nos. 1 and 2.

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

The proposed rule change consists of amendments to Sections 102.01B, 102.01C, 103.01A, 103.01B, 802.01B and 802.01C of the *Listed Company Manual* ("Manual") of the Exchange. These sections of the Manual set forth the financial original and continued listing standards of the Exchange. The text of the proposed rule change, as amended, is as follows. New text is *italicized*.

NYSE Listed Company Manual

* * * * *

Section 1

The Listing Process

* * * * *

102.01B. A company must demonstrate an aggregate market value of publicly-held shares of \$60,000,000 for companies that list either at the time of their initial public offerings ("IPOs") (C) or as a result of spin-offs *or under the Affiliated Company standard*, and \$100,000,000 for other companies (D).

102.01C. A company must meet one of the following financial standards:

* * * * *

(IV) *Affiliated Company Standard*⁵
(1) *Market capitalization of \$500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);*

(2) *Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);*

(3) *Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and*

(4) *Parent/affiliated company retains control* of the entity or is under common control* with the entity.*

* "Control" for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other idicla

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² Because Amendment No. 1 replaces the original proposal, the 60 day period will be calculated based on a March 31, 2000 filing date.

¹³ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation 15 U.S.C. 78c(f).

⁵ The formatting of the components in the proposed Affiliated Company listing standard were changed from capital letters (A, B, C, and D) to numbers (1, 2, 3, and 4). Telephone conversation between James Duffy, Senior Vice President and Associate General Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on April 12, 2000.