

query or change the credit limits they have set.

Nasdaq expects that the systems change necessary to implement the features described above will be in place in the third quarter of 2000. Because these changes address the issues raised by the commission in its approval order, Nasdaq believes that the trading parameters contained in the approval order and reflected in Application rule 4999 can be eliminated. Further, Nasdaq believes that the Application should be permanently approved because the only concerns that were raised during the approval process have been addressed.

*(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, as amended.

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

The Association has neither solicited nor received written comments.

**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 such 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 proposal 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 number SR-NASD-00-37 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-20057 Filed 8-8-00; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43103; File No. SR-NASD-00-44]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules, and To Issue an Interpretation Regarding Net Trading**

August 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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

Nasdaq's proposes to delay until November 1, 2000 the implementation date of the riskless principal trade reporting rule changes announced in SR-NASD-98-59<sup>5</sup> and SR-NASD-98-08,<sup>6</sup> and the interpretations thereto filed in SR-NASD-99-39,<sup>7</sup> SR-NASD-99-52,<sup>8</sup> and SR-NASD-00-06.<sup>9</sup> Nasdaq also is proposing an interpretation to clarify a statement in *Notice to Members 99-65*.

**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 its proposal and discussed any comments it received regarding the proposal. 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*

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter ("OTC") equity securities, and exchange-listed securities traded in the Nasdaq InterMarket ("Riskless Principal Trade Reporting Rules").<sup>10</sup> Under the new Riskless Principal Trade Reporting Rules, a "riskless" principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR-NASD-98-59, the Commission asked Nasdaq to submit an interpretation providing

<sup>5</sup> Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

<sup>6</sup> Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

<sup>7</sup> Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

<sup>8</sup> Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

<sup>9</sup> Securities Exchange Act Release No. 42494 (March 3, 2000), 65 FR 15933 (March 24, 2000).

<sup>10</sup> See footnotes 5 and 6, *supra*.

examples of how mark-ups, mark-downs, and other fees would be excluded for purposes of the amended riskless principal rules.<sup>11</sup> As requested, on August 5, 1999, Nasdaq filed with the Commission SR-NASD-99-39,<sup>12</sup> attached to which was *Notice to Members 99-65*, which gave examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principal Trade Reporting Rules. SR-NASD-99-39<sup>13</sup> and *Notice to Members 99-65* were filed as an interpretation to NASD Rules 4632, 4642, 4652, and 6620.

*Notices to Members 99-65* (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *99-66* (discussing, among other things, the trade reporting rules for the Nasdaq InterMarket) were published in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99-65* and *99-66*, a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline, due (in large part) to Year 2000 ("Y2K") remediation and testing requirements. In response, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620, the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.<sup>14</sup>

Subsequently, a number of NASD member firms requested a further extension of the implementation date of the Riskless Principal Trade Reporting Rules.<sup>15</sup> The firms stated that the approach described in *Notices to Members 99-65* and *99-66* for riskless principal trade reporting raised significant issues that needed to be addressed in greater detail through, for example, interpretive guidance. The firms requested an extension of the implementation date until September 1, 2000 to provide time to resolve the

issues posed and to program systems. On February 23, 2000, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620 to delay the implementation date of the new Riskless Principal Trade Reporting Rules until September 1, 2000.<sup>16</sup>

Nasdaq is now requesting a further extension of the implementation date until November 1, 2000. Nasdaq believes the extension is necessary to allow Nasdaq and the firms the time to finalize a workable solution to the problems the firms identified, and to make the necessary programming changes, especially in light of the resources that are being devoted to the implementation of decimal pricing by both the firms and Nasdaq.<sup>17</sup>

Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the decimalization efforts, the need for the NASD and the firms to develop workable solutions to the problems identified, and the programming changes required by the rule change. Nasdaq believes it would not be prudent, nor would it be consistent with section 15A of the Act,<sup>18</sup> to require members to implement substantial system changes at a time when they are focusing significant resources and time to implement decimal pricing, especially if the changes will not accomplish the objectives of streamlining trade reporting in Nasdaq, OTC, and Nasdaq InterMarket securities and reducing SEC transaction fees.<sup>19</sup>

Nasdaq also proposes to issue an interpretation to clarify a statement that was made in *Notice to Members 99-65* with respect to net trading of Nasdaq and OTC securities. A market maker trades "net" with an institution when the firm accumulates a position at one price and executes the offsetting trade with the institutional customer at another price.

*Notice to Members 99-65* announced SEC approval of the Riskless Principal Trade Reporting Rules and included an attachment containing questions and answers regarding the rule change. A number of questions and answers in the *Notice* discuss net trading. For example,

question and answer 4 state the following:

Q. How does a member determine whether transactions are at the "same price"?

[If] a member is working an order for an institutional account \* \* \* or of a block size \* \* \* and the member finds the other side of the order, the presumption will be that the orders will be matched off at the same price (exclusive of any markup or markdown, commission equivalent, or other fee) and reported as riskless principal, unless the customer has specifically requested that the order be traded on a net basis at a difference price.

Questions and answers 3, 6, and 7 also addressed net trading.

After this *Notice* was issued, a number of firms requested guidance on how to document the customer request that the order be traded on a net basis, and asked for permission to use "negative consent" letters to refute the presumption that the orders will be matched off at the same price, citing difficulties with obtaining affirmative consent from customers. After thorough consideration of this issue, Nasdaq has concluded that firms may use negative consent letters to evidence a customer request to trade on a net basis, as long as the letter meets the following conditions.

A firm using a negative consent letter to demonstrate a customer request to trade on a net basis should send a letter to the customer clearly disclosing the terms and conditions for handling the customer's orders. Only one letter must be sent to each customer; a letter is not required for each transaction. The customer must be provided with a meaningful opportunity to object to any statements in the letter. If no objection is received, the firm may reasonably conclude that the customer has consented to the terms and conditions in the letter and has requested that the firm trade for the customer on a net basis. Nasdaq will publicize this interpretation in a new *Notice to Members* that will be issued when further revisions are made to the Riskless Principal Trade Reporting Rules.

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>20</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in

<sup>11</sup> Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

<sup>12</sup> See footnote 7, *supra*.

<sup>13</sup> *Id.*

<sup>14</sup> See footnote 8, *supra*.

<sup>15</sup> See letter to Belinda Blaine, Associate Director, SEC, dated February 18, 2000 from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jeffries & Company, Inc.; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Witter; and Salomon Smith Barney Inc.

<sup>16</sup> See footnote 9, *supra*.

<sup>17</sup> See Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000) (File No. 4-430), and Order Directing the Exchanges and the NASD to Submit a Phase-In Plan to Implement Decimal Pricing in Equity Securities and Options, Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>18</sup> 15 U.S.C. 78o-3.

<sup>19</sup> See Section 31 of the Act, 15 U.S.C. 78ee.

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest.

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

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,<sup>21</sup> and Rule 19b-4(f)(1)<sup>22</sup> thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 file number

SR-NASD-00-44 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-20058 Filed 8-8-00; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43110; File No. SR-NYSE-00-19]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 1006 of NYSe Direct+™, the Exchange's Automatic Execution Facility for Certain Limit Orders**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of proposed new Exchange Rule 1006, which will provide automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation through the NYSe Direct+™ facility. It also provides for an amendment to the list of rules subject to summary fine procedures under Exchange Rule 476A. The text of the proposed rule change is set forth below. All language is being added.

**Rule 1006: Automatic Execution of Coupled Orders**

(a) A member or member organization may enter for automatic execution against each other a limit order to buy of 1099 shares or less coupled with a limit order to sell the same number of shares, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed: (1) at the NYSE's published bid price or within the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYS's published offer price, or within the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced either at the NYSE's published offer price or a price within the bid offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced either at the NYSE's published bid price, or within the bid-offer spread.

(b) Coupled orders as described in paragraph (a) may be entered for any amount up to 1099 shares, regardless of the size of the then-prevailing NYSE published bid or offer. Coupled orders shall have priority over all other orders at that price, regardless of time of entry, and shall be immediately executed and reported. Coupled orders may not be entered if both sides are for the account of a broker-dealer.

\* \* \* \* \*

**List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A**

\* \* \* \* \*

Failure to adhere to procedures for internalization (automatic execution of coupled orders) under the NYSe Direct+™ facility (Rule 1006)

**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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>22</sup> 17 CFR 240.19b-4(f)(1).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>22</sup> 17 CFR 240.19b-4(f)(1).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).