

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43232; File No. SR-NASD-00-46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Decimal Pricing for Listed Securities

August 30, 2000.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 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" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 24, 2000, Nasdaq amended the proposed rule change.³ Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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

On June 8, 2000, the Commission ordered the national securities exchanges and the NASD

("Participants") to submit a phase-in plan to the Commission July 24, 2000 providing for decimal pricing in exchange-listed securities and options by September 5, 2000, and for phasing in of decimal pricing for at least some Nasdaq securities by March 12, 2001, with decimalization extended to all exchange-listed securities, options and Nasdaq securities by April 9, 2001.⁷ The June 8th Order also requires the exchanges and NASD file by August 7, 2000 rule changes necessary to implement the Plan.

The Participants have developed recommendations for a Phase-In Period for conversion to decimal pricing. These recommendations are contained in the Plan, which was submitted to the Commission on July 24, 2000. This Phase-In Period, which will consist of four Phases, will begin on August 28, 2000, and will end with full implementation of decimal pricing for all equities and options on or before April 9, 2001.

Nasdaq proposes to modify various NASD rules to support the commencement of the limited decimal pilot for Exchange-listed issues scheduled to start on August 28, 2000, as provided for in the Plan. Nasdaq also proposes to amend the appropriate rules to conform to proposed changes to the Intermarket Trading System ("ITS") Plan. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁸ Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

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IM-2230. "Third Market" Confirmations

Members who act as brokers for customers in transactions in listed securities in the "third market," and members who make markets in such securities, have sought clarification and uniformity regarding the disclosures to be made to customers in situations in which the third market firms had confirmed to the retailing member plus or minus a differential, e.g., "20 plus 1/8" or "20 minus 1/8 for securities trading in fractions, or "\$20 plus \$.10 or \$20 minus \$.10 for securities trading in decimals." In some such cases the confirmation from the retailing member to the customer has indicated that the transaction was effected for the customer at a price of 20 and that the total commission paid by the customer was received by the retailing member, and it failed to disclose that the retailing member,

in effect, absorbed the 1/8 or \$.10 differential charged by the third market firm.

In cases such as those described above, where the retailing member effects an agency transaction for his customer with a third market firm at a price which is in line with the then current price on the exchange plus or minus a differential, with the retailer absorbing the differential charged by the third market firm, the following legend should be used by the retailing member to insure adequate disclosure on the confirmation to the customer:

We executed this transaction for you with a dealer who confirmed to us at the above price, plus (in the event you purchased) or less (in the event you sold) [a fraction of * * *] * * * cents per share. This [fraction] amount was absorbed by us out of the amount shown as our commission. Full details of this transaction are available upon request. * The fractional amount absorbed may be shown, for example, as 1/8 or written one-eighth.

Failure to send an appropriate confirmation which conforms to the provisions hereof may involve not only conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, but also violations of rules of the Commission, particularly the confirmation rule, SEC Rule 10b-10.

* * * * *

3220. Adjustment of Open Orders

(a) No change.

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used (e.g., if a market has minimum quotation variations of 1/16 or 1/32 of a dollar for securities trading in fractions, depending on the price of the security, or \$.01 for securities trading in decimals, then the adjustment to open orders shall be in increments of 1/16 of a dollar for issues trading in fractions, and \$.01 for issues trading in decimals);

(2)-(3) No change.

(b)-(e) No change.

3370. Prompt Receipt and Delivery of Securities

(a) No change.

(b) (1)-(4) No change.

(5) "Bona Fide Fully Hedged" and "Bona Fide Fully Arbitrated"

In determining the availability of the exemption provided in paragraph (b)(2)(B) above and in Rule 11830 from short sale requirements for "bona fide fully hedged" and "bona fide fully arbitrated" transactions, the following guidelines shall apply. These guidelines are for illustrative purposes and are not intended to limit the Association's ability to determine the proper scope of the terms "bona fide fully hedged" or "bona fide fully arbitrated" pursuant to this provision, on a case-by-case basis.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Thomas P. Moran, Counsel, The Nasdaq Stock Market, Inc. ("Nasdaq"), to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation ("Division"), Commission, dated August 24, 2000 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the proposed rule text that was originally filed in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Commission agreed to waive the 5-day pre-filing notice requirement because the proposal implements decimal pricing pursuant to the "Decimals Implementation Plan for the Equities and Options Markets" ("Plan") submitted to the Commission on July 24, 2000.

⁷ Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) ("June 8th Order").

⁸ 17 CFR 240.19-b4(f)(6)(iii).

(A) Bona Fide Fully Hedged

The following transactions shall be considered bona fide fully hedged:

(i) Short a security and long a convertible debenture, preferred or other security which has a conversion price at or in the money and is convertible within ninety days into the short security.

Example: Long ABCD Company 9% convertible subordinated debentures due [1998] 2003. Each debenture is convertible into common at \$27.90 per share of common equal to 35.842 shares of common per 1M debenture.

- With the price of the ABCD at $8\frac{3}{4}$ –9 or 8.75–9 and a short position of 100 shares of ABCD the short position would not be exempt.

- If the price of ABCD was \$28 with a short position of 100 shares, 35 shares would be exempt and the remaining 65 shares would not be exempt.

(ii) Short a security and long a call which has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security.

Example: Long 1 call of EFGH at a price of either $[\$44\frac{1}{8}]$ or \$44.10 with a strike price of 40 expiring within 90 calendar days.

- With the circumstances as above 100 shares would be exempt.
- If the strike price was 50 a short position of 100 shares would not be exempt.

- With any strike price and the call expiring in more than 90 days any short of the common would not be exempt.

(iii) Short a security and long a position in warrants or rights which are exercisable

within 90 days into the short security. To the extent that the long warrants or rights are “out of the money,” then the short position shall be exempt up to the market value of the long warrants or rights.

Example: Long 100 warrants of IJKL (IJKLW: $2\frac{1}{4}$ – $2\frac{3}{4}$ or 2.25–2.75). Each warrant is exercisable into 1 share of common at \$2. (IJKL: $4-4\frac{1}{2}$ or \$4–4.50).

- With the circumstances as above a short position of 100 shares would be exempt.
- If the price of IJKL is \$1.50 and the market value of long warrants is $\frac{1}{4}$ of a point, or \$.25, a short position of 16 shares would be exempt.

(B) Bona Fide Fully Arbitrated

The following transactions shall be considered bona fide fully arbitrated:

(i) No change.

(ii) Long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the securities.

Example: Long 100 shares of MNOP (MNOP: $51-51\frac{1}{4}$ or 51.00–51.25) which is being acquired by QRST Corp. (QRST: $52\frac{1}{8}-52\frac{3}{8}$ or 52.10–52.30) at the rate of 1.15 shares per MNOP share.

- If the exchange is to take place within 90 days then a short of 115 shares of QRST would be exempt from the mandatory buy-in. Also, if the exchange was to take place at a

date later than 90, all short positions in the above example would be subject to the mandatory buy-in.

(c) No change.

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Intermarket Trading System/Computer Assisted Execution System

Rules 5210. through 5230. No Change.

Rule 5240. Pre-Opening Application—Opening by ITS/CAES Market Maker the pre-opening application enables an ITS/CAES Market Maker or ITS Participant Exchange in any participant market who wishes to open his market in an ITS Security to obtain through the ITS System or CAES, any pre-opening interest of an ITS Participant Exchange or other ITS/CAES Market Makers registered in that security and/or market makers in other participant markets.

(a) Notification Requirement—Applicable Price Change, Initial Notification

(1) Whenever an ITS/CAES Market Maker, in an opening transaction in any ITS/CAES Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the “applicable price change” (as defined below), he shall notify the other Participant markets of the situation by sending a “pre-opening notification” through the System. Thereafter, the ITS/CAES Market Maker shall not open the security in his market until not less than three minutes after his transmission of the pre-opening notification. The “applicable price changes” are:

Security	Consolidated closing price	Applicable price Change (more than)
Network A	Under \$15	$\frac{1}{8}$ point.
	\$15 or over [*]	$\frac{1}{4}$ point. ¹
Network B	Under \$5	$\frac{1}{8}$ point.
	\$5 or over	$\frac{1}{4}$ point. ²

For transactions involving securities trading in decimal-based increments, the “applicable price changes” are:

Security	Consolidated closing price	Applicable price Change (more than)
Network A	Under \$15	\$0.10
	\$15 or over	¹ 0.25
Network B	Under \$5	0.10
	\$5 or over	² .25

¹ If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the “applicable price change” is one [point] dollar.

² If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the “applicable price change” is one dollar.

(2) A pre-opening notification shall:
(A) be designated as a pre-opening notification (POA);

(B) identify the ITS/CAES Market Maker and the security involved; and
(C) indicate the “applicable price range” by being formatted as a standardized pre-

opening administrative message as follows:
POA MMID/XYZ (RANGE)

(3) The price range shall not exceed the “applicable price range” shown below:

Security	Consolidated closing price	Price range
Network A	Under \$50	$\frac{1}{2}$ point.
	\$50 or over [**]	1 point. ³
Network B	Under \$10	$\frac{1}{2}$ point.

Security	Consolidated closing price	Price range
	\$10 or over	1 point. ⁴

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:

Security	Consolidated closing price	Price range
Network A	Under \$50	\$0.50
	\$50 or over	³ 1.00
Network B	Under \$10	0.50
	\$10 or over	⁴ 1.00

³ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two [points] dollars.

⁴ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a $\frac{1}{8}$ – $\frac{5}{8}$ price range would be permissible if the previous day's consolidated closing price were $\frac{1}{8}$ or $\frac{5}{8}$, but not if the closing price were $\frac{1}{4}$ or $\frac{3}{8}$ or $\frac{1}{2}$).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15 – 40.65 price range would be permissible if the previous day's consolidated closing price were 40.15 – 40.65, but not if the closing price were within the price range of 40.16 – 40.64).

(b) Subsequent Notifications, (b)(1) through (b)(2)(ii) No Change.

(B) Notwithstanding the preceding sentence, in situations where the price range is an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30–30 $\frac{1}{2}$; 30 $\frac{1}{8}$ –30 $\frac{5}{8}$; or 30 $\frac{1}{4}$ –30 $\frac{3}{4}$. It is then determined that the stock will open at 29 $\frac{3}{4}$ or 29 $\frac{7}{8}$. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30 $\frac{1}{8}$, or 30 $\frac{1}{4}$, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

Example for Decimal-Based Securities: CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60. It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

(3) Participation as Principal Precluded ("Second Look").

If a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as a principal in the opening transaction (e.g. his responding principal interest is to sell at price $\frac{1}{8}$ or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (i.e., the parenthetical example above, the total amount of the security that he would have to sell at the $\frac{1}{8}$ better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. his responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (i.e., the parenthetical example above, the total amount of the security that he would have to sell at the .01 better price to permit the opening transaction to occur at that price).

(c)–(i) No Change.

5250. Pre-Opening Application—Openings on Other Participant Markets (a) Pre-Opening Responses:

Whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-

opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicate in the pre-opening notification (e.g., 40 $\frac{3}{8}$), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in the pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and shown the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40), reflected on a netted share basis.

The pre-opening response shall be formatted as follows: POR (MMID) BUY (SELL) A–P 40. $\frac{3}{8}$

For securities trading in decimal-based increments the pre-opening response shall be POR (MMID) BUY (SELL) A–P 40.40

The response may also show market orders separately.

(b)–(f) No Change.

Rules 5260. through 5265. No Change.

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6300. Consolidated Quotation Service (CQS)

6310. No Change.

6320. No Change.

6330. Obligations of CQS Market Makers

(a) No Change.

(b)–(d) No Change.

(e) Minimum Price Variation for Decimal-based Quotations

(1) The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals

Implementation Plan for the Equities and Options Markets shall be \$0.01.

6340. through 6370. No Change.

* * * * *

6400. Reporting Transactions in Listed Securities

6410. Definitions

(a)–(h) No Change.

6420. Transaction Reporting

(a)–(c) No Change.

(d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 less a commission of \$12.50;
REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 less a commission of \$12.50;

BUY as agent 100 shares at 40 plus a commission of \$12.50;

REPORT 100 shares at 40.

(3)(A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.

Example: BUY as principal 100 shares from another member at 40 (no mark-down included).

REPORT 100 shares at 40.

Example: BUY as principal 100 shares from a customer at 39 $\frac{3}{4}$, which includes a $\frac{1}{8}$ mark-down from prevailing market of 39 $\frac{7}{8}$;

REPORT 100 shares at 39 $\frac{7}{8}$.

Example: BUY as principal 100 shares from a customer at 39.75, which includes a \$.10 mark-down from prevailing market of \$39.85;

REPORT 100 shares at 39.85.

Example: SELL as principal 100 shares to a customer at 40 $\frac{1}{8}$, which includes a $\frac{1}{8}$ mark-up from the prevailing market of 40;
REPORT 100 shares at 40.

Example: SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;
REPORT 100 shares at 40.

(B) Exception: A “riskless” principal transaction in which a member that is not a market maker in the security after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down. A riskless principal transaction

in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

Example: BUY as principal 100 shares from another member at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus mark-up of \$12.50;
REPORT 100 shares at 40.

Example: BUY as principal 100 shares on an exchange at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.

DO NOT REPORT (will be reported by exchange).

(e) No Change.

* * * * *

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 proposes to modify various NASD Rules to support the commencement of the limited decimal pilot for Exchange-listed issues scheduled to start on August 28, 2000, pursuant to the Plan. The Minimum Price Variation (“MPV”) for Exchange-listed securities trading pursuant to the pilot program under the Plan would be \$.01. Nasdaq also proposes amendments to various NASD rules to implement the pilot program in Exchange-listed securities under the Plan. Further, Nasdaq proposes to amend the appropriate rules to conform to proposed changes to the ITS Plan.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁹ in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and in general, to protect investors and the public interest.

⁹ 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement 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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from August 7, 2000, the date that the proposal was filed, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b–4(f)(6) thereunder.¹¹ 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 the furtherance of the purposes of the Act.¹²

Nasdaq has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal, as amended, to become immediately operative upon filing. Acceleration of the operative date will permit Nasdaq to implement the pilot program of decimal quoting in Exchange-listed securities under the Plan starting on August 28, 2000.¹³

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f)(6).

¹² The Commission considers the abrogation period to begin on the date the last substantive amendment is filed with the Commission. In this case, Nasdaq filed Amendment No. 1 on August 24, 2000.

¹³ The Plan provides for MPVs for equities and options of no less than one cent. The June 8th Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the

The Commission also believes that the proposed amendments are non-controversial as they provide housekeeping changes with respect to rules that express price values in fractions being changed to decimals. Nasdaq has also requested that the Commission waive the 5-day pre-filing requirement. The Commission also finds good cause to waive the 5-day pre-filing requirement since the proposed rule amendments are in accordance with the Plan. For these reasons, the Commission designates that the proposal, as amended, become operative immediately upon filing with the Commission.¹⁴

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 File No. SR-NASD-00-46 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

¹⁴ For purposes only of accelerating the operative date of this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43230; File No. SR-NYSE-00-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Decimal Pricing

August 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 3, 2000, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. The Exchange amended the proposal on August 7, 2000.³ The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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 Exchange proposes to amend various NYSE rules, as listed below, to implement decimal pricing, as provided for in the Plan. The Exchange also proposes to amend NYSE Rule 15 to make it conform to a proposed amendment to the Intermarket Trading System ("ITS") Plan. The NYSE has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁷ The text of the proposal is available at the NYSE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Daniel P. Odell, Assistant Secretary, NYSE, to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation ("Division"), Commission, dated August 7, 2000 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Commission agreed to waive the 5-day pre-filing notice requirement because the proposal implements decimal pricing pursuant to the "Decimals Implementation Plan for the Equities and Options Markets" ("Plan") submitted to the Commission on July 24, 2000.

⁷ 17 CFR 240.19b-4(f)(6)(iii).

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 in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 8, 2000, the Commission ordered the national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") to submit a phase-in plan to the Commission by July 24, 2000 providing for decimal pricing in exchange listed securities and options by September 5, 2000, and for phase-in of decimal pricing for at least some Nasdaq securities by March 12, 2001.⁸ The June 8th Order also requires the exchanges and the NASD to file by August 7, 2000 rule changes necessary to implement the Plan.

Phase I will begin on August 28, 2000. The Exchange will begin quoting on that date seven listed securities in decimals on a pilot basis. The seven listed securities and their trading symbols are: Anadarko Petroleum Corp. (APC); Forest City Enterprises Inc. Class A (FCE A); Forest City Enterprises Inc. Class B (FCE B); FedEx Corp. (FDX); Gateway Inc. (GTW); Hughes Supply Inc. (HUG); and MSC Software Corp. (MNS).

Quoting in all other listed securities will continue in fractions of $\frac{1}{16}$ of a dollar. After approximately one month, the pilot will be expanded to include approximately 50 stocks. Additional expansion of the program will take place after extensive evaluation by the Exchange and other securities industry participants. It is anticipated that decimal pricing will be extended to all listed securities in the first quarter of 2001.

The Exchange proposes to amend various NYSE rules, changing references from fractions to decimals within the rules to accommodate the implementation of decimal pricing in accordance with the Plan. Specifically, the Exchange proposes to amend NYSE

⁸ Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) ("June 8th Order").