Applicant's Condition

Applicant agrees that the requested order shall be subject to the condition that Applicant continues to provide investment advisory services only with respect to the assets of the CSX Companies and does not solicit public clients.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16497 Filed 6–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41543; File No. SR–NASD–99–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Firm Quotation Requirements

June 22, 1999.

I. Introduction and Background

On April 20, 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 (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change would require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also would prohibit the use of automatic quote updating in such circumstances.

Notice of the proposed rule change was published for comment in the **Federal Register** on May 18, 1999.[3] The Commission received four comment letters regarding the proposal.[4] This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41390 (May 12, 1999) 64 FR 27016.

[4] *See* Letter from Richard Y. Roberts, Esquire, Thelen Reid & Priest LLP, on behalf of the Electronic Traders Association (''ETA'') to Jonathan Katz, Secretary, SEC, dated June 8, 1999 (''ETA Letter''); Letter from Gerald S. Putnam, Chief Executive Officer, Archipelago, LLC to Jonathan G. Katz, Secretary, SEC dated June 8, 1999 (''Archipelago Letter''), Letter from Mike Cormack, Manager, Equity Trading, American Century Investment Management (''ACIM'') to Jonathan Katz

order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend NASD Rule 4613(b), ''Firm Quotations,'' and IM–4613, ''Autoquote Policy,'' to require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also will prohibit the use of automatic quote updating in such circumstances.

According to Nasdaq, the proposal is designed to correct the inefficiencies that arise when a market participant must use multiple small orders to accomplish the objectives of a single large order. In this regard, Nasdaq notes that a market participant may be required to enter multiple small orders when a market maker enters a minimum quotation size, receives an order larger than its quoted size, fills the order only up to its quoted size (as currently required under NASD Rule 4613(b)), and remains at the inside quote prepared to accept another order at the minimum quotation size. The following example illustrates this scenario:

Market Maker #1 (''MM1'') is bidding $10 for 100 shares of ABCD. Order Entry Firm # (''OE1'') sends a preferenced SelectNet order to MM1 to sell 1000 shares of ABCD at $10, MM1 partially executes OE1's 1000-share order by buying 100 shares of ABCD, and does not move its quotation. Assuming MM1 is alone at the inside (i.e. at the best bid), OE1 may be compelled to send multiple SelectNet messages to MM1, potentially resulting in a total of ten transactions to complete its 1000-share order.

Nasdaq maintain that although MM1 has complied with NASD Rule 3320, ''Offers at Stated Prices,'' IM–3320, ''Firmness of Quotations,' current NASD Rule 4613(b), and Exchange Act Rule 11Ac1–1 [5] executing a presented order up to its published quotation price and size, it is apparent that MMI was willing to buy more than the 100 shares displayed. Nasdaq believes that MM1's actions result in increased transaction costs, impede the price discovery process, and preclude other market

Secretary, SEC, dated June 3, 1999 (''ACIM Letter''); Letter from Matthew W. Johnson, Managing Director, Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 9, 1999 (''Lehman Letter'').

[5] 17 CFR 240.11Ac1–1 (requiring a broker-dealer to execute orders at prices at least as favorable as its published quotation in an amount up to its published quotation size).

makers from positiving executing large orders.

In addition, Nasdaq believes that MM1's actions may hinder price continuity and lead to increased instances of locked and crossed markets. For example, if MM1 is bidding 100 shares at $20, and MM2 wishes to lower its offer from $20¹/₁₆ to $20, MM2 would send MM1 a SelectNet message for 100 shares (or more) in an attempt to exhaust MM1's quote. After sending multiple SelectNet messages to take out MM1, MM2 may move its quote to $20, thereby locking the market.[6]

Nasdaq states that the proposal is designed to effectuate the display of a market maker's true and intended quotation size. Nasdaq believes that when a market maker receives an order larger than the market maker's displayed size and completes the order only at its displayed size, the market maker has indicated clearly that its interest in trading at that price level has been depleted. Accordingly, the proposal will require a maket maker that has partially filled an incoming order that is greater than the market maker's displayed size to adjust its quote to an inferior price level.

Nasdaq proposes to modify IM–4613(b) to mandate compliance with proposed NASD Rule 4613(b)(2). IM–4613(a) generally prohibits the use of ''autoquote'' mechanisms to generate automatically a new quote that would keep a market maker's quote away from the best market. IM–4613(b)(1) provides an exception to this rule that permits the use of autoquote functions when the update is in response to an execution in the security by that firm. Nasdaq proposes to revise IM–4613(b)(1) to require that the market maker comply with proposed NASD Rule 4613(b)(2) by allowing the market maker to update automatically its quote only after fully executed the incoming order. If the order is not executed in full, the autoquote functionality must be discontinued and the market maker must revise its quote to an inferior price level.

III. Summary of Comments

The Commission received four comment letters regarding the proposal.[7] All four commenters generally supported the proposed rule change. One commenter argued, for example, that the proposal will increase

[6] The Commission notes that market makers are required to use reasonable means to avoid locking and crossing the market. *See* Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51987 (September 29, 1998) (order approving File No. SR–NASD–98–01).

[7] *See Supra* Note 4.

efficiency by providing a mechanism that will assist the marketplace in expeditiously assesing the size of trading interest by market participants.[8] Another commenter maintained that the proposal will reduce the long-standing problem associated with market makers who inhibit price discovery and market liquidity of remaining at the inside bid or offer for extended periods of time. The commenter also stated that the proposal will reduce transction costs, allow for more orderly executions of trades, and increase transparency in the marketplace.[9] A third commenter believed that the proposed represents a sound solution to a inefficient market situation, but urged the Commission and the NASD to review the continuing need for the autoquote policy contained in IM–4613.[10]

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6), 15A(b)(11), and Section 11A(a)(1)(C) of the Act.[11] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(11) requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In Section 11A(a)(1)(C), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities of securities transactions; (2) fair competition among brokers and dealers; (3) the availability of brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the

practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Specifically, the Commission finds that the proposal to amend NASD Rule 4613 by requiring that a market revise its quotation to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quote size is consistent with Sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act because it will encourage market makers to display quotations that accurately reflect their trading interest, thereby producing more informative quotation information and increasing market transparency. Increased transparency, in turn, will enhance the integrity of the market and facilitate price discovery by helping market participants asesss the supply and demand for securities.

In addition, the Commission finds that the proposal may help to reduce instances of locked and crossed markets which may occur, according to Nasdaq, when a market maker is unable to exhaust the bid or offer of another market maker after sending the market maker multiple SelectNet messages.[12] The Commission believes that continued locking and crossing of the market can negatively impact market quality.[13] By reducing the frequency of locked and crossed markets, the Commission believes that the proposal should improve market quality and help to maintain a fair and orderly market, to the benefit of all market participants.

The Commission also finds that the proposal could help to reduce the transaction costs that arise currently when a market participant must execute multiple small orders rather than a single large order because a market maker does not trade to the full extent of its interest at its displayed price in a single transaction. By reducing transaction costs, the proposal should help to provide for the economically efficient execution of securities transactions, consistent with Section 11A(a)(1)(C) of the Act.

The Commission finds that the amendment to IM–4613 is appropriate and consistent with the Act because it will help to effectuate compliance with NASD Rule 4613, as amended. Specifically, IM–4613, as amended, will

allow a market maker to update automatically its quote only after executing an incoming order in full. If the market maker fails to execute fully the incoming order, the market maker must discontinue the autoquote functionality and revise its quotation to disseminate an inferior price. Accordingly, IM–4613, as amended, will help to ensure that a market maker does not automatically update its quote to remain at the inside after it has failed to execute fully an incoming order that is greater than the market maker's published quote size.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, in general, and in particular, with Sections 15A(b)(6), 15A(b)(11), and Section 11A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD 99–20) be, and hereby is, approved.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16446 Filed 6–28–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41547; File No. SR–NASD–99–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Entry Fees and Annual Fees for Foreign Issuers Quoted on the Nasdaq National Market

June 22, 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 7, 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") the proposed

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[8] *See* Archipelago Letter *Supra* note 4.

[9] *See* Lehman Letter, *supra* note 4.

[10] *See* ETA Letter, *supra* note 4.

[11] 15 U.S.C. 78o–3(b)(6), 15 U.S.C. 78o–3(b)(11), and 15 U.S.C. 78k–1.

[12] As noted above, market makers are required to use reasonable means to avoid locking and crossing the market. *See* Securities Exchange Act Release No. 40455, *supra* note 6.

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.