

efficiency by providing a mechanism that will assist the marketplace in expeditiously assessing 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 transaction 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 an 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 fictitious 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 assess 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]

BILLING CODE 8010-01-M

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

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.

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.*

rule change as described in Items I and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval to the proposed rule change.

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

The NASD has filed with Commission a proposed rule change regarding entry fees and annual fees for foreign issuers quoted on the Nasdaq National Market. Below is the text of the proposed rule change. The proposed new language is italicized.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

(1) No change.

(2) Total shares outstanding means the aggregate of all classes of equity securities to be included in the Nasdaq National Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. *In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.*

(3) No change.

(4) No change.

(b) Additional Shares

No change.

(c) Annual Fee—Domestic and Foreign Issues

(1)–(3) No change.

(4) *The annual fee shall be based on the total shares outstanding of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.*

(d) Annual Fee—American Depository Receipts (ADRs)

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, the Association 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 III below. The Association 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

Effective January 1, 1998, the NASD adjusted the Entry Fee and the Annual Fee for Nasdaq National Market issuers ("the 1998 fee change").³ The 1998 fee change was justified, in part, by the increased costs associated with efforts to communicate with investors and to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs.

As a result of the 1998 fee change, the method for computing entry fees and annual fees on the Nasdaq Stock Market was changed to rely solely on the issuer's total shares outstanding. The NASD now believes that with respect to foreign issuers whose shares are quoted on the Nasdaq National Market, total shares outstanding is not the best benchmark upon which to base listing fees. In particular, the NASD notes that only those shares outstanding in the United States typically trade on the Nasdaq Stock Market, and it is the holders of these shares that primarily receive the benefits of a listing on the Nasdaq Stock Market, including those benefits detailed when the 1998 fee change was approved. Accordingly, the Association proposes to charge entry fees and annual fees for such foreign issuers based on the total shares outstanding in the United States.

In order to effectuate this change, the Association will request that foreign issuers provide Nasdaq with the total number of shares outstanding in the United States. In the event that a foreign issuer does not provide that information, the NASD will assess fees for that issuer based upon the total shares outstanding as shown in the most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

³ Securities Exchange Act Release No. 39613 (February 2, 1998); 63 FR 6789 (February 10, 1998).

The NASD requests that this proposal be made effective as of January 1, 1999, with respect to annual fees.

Accordingly, issuers will be given a credit for the difference between the 1999 annual fee that they have paid and the fee as computed for 1999 under this proposed rule change. This credit can be used to offset future fees owed to Nasdaq.

With respect to entry fees, the Association requests that this proposal be effective immediately upon approval.

2. Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)⁴ and (6)⁵ of the Act. The NASD believes the proposed rule change is consistent with Section 15A(b)(5) because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. The NASD also believes the proposed rule change is consistent with Section 15A(b)(6) because it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As noted above, the proposed rule change allocates fees for foreign issuers based on the number of shares that trade on the Nasdaq Stock market and the shareholders that receive the benefit of the Nasdaq listing.

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

The NASD 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. 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

⁴ 15 U.S.C. 78o-3(b)(5).

⁵ 15 U.S.C. 78o-3(b)(6).

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-99-30 and should be submitted by July 20, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a registered securities association,⁶ and, in particular, the requirements of Section 15A(b)(5) and Section 15A(b)(6) of the Act.

Section 15A(b)(5) requires that the rules of a registered securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using any facility or system which the association operates or controls. The proposal amends the entry fees and annual fees paid by foreign issuers listed on the Nasdaq National Market. These fees are proposed to be based on a foreign issuer's number of outstanding shares trading in the United States.⁷ The Commission finds that this number is reasonable because it represents the number of shareholders that receive the benefits of listing on Nasdaq Stock Market. The Commission also finds that the new fees are equitably allocated among foreign issuers because all foreign issuers are subject to the same fee calculation. Moreover, the Commission finds that the fees are reasonably allocated among all issuers, foreign and domestic, because they are based upon the benefits derived by each issuer.

Section 15A(b)(6) requires, among other things, that the rules of a registered securities association be designed to promote just and equitable principles of trade and not be designed to permit unfair discrimination between

customers, issuers, brokers, or dealers. The proposal applies equally to all foreign issuers that trade in the United States on the Nasdaq stock Market, thus it is not designed to permit unfair discrimination among foreign issuers. In addition, as discussed above, the proposal should not permit unfair discrimination among all issuers because the fees are based upon an issuer's usage of the Nasdaq Stock market.

Finally, the Commission notes that the proposed change to the annual fees are to be made effective as of January 1, 1999. The Commission finds that since the proposed change reduces the amount of fees owed by foreign issuers and that as a result of this proposed change foreign issuers will be given a credit for the higher fees paid thus far in 1999 to be applied to future annual fees that it is consistent with the Act to make these changes effective retroactively.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The proposal reduces the amount of entry fees and annual fees to be paid by foreign issuers. These reductions do not raise any new or novel regulatory issues. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(5) and (6) to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-99-30) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-16498 Filed 6-28-99; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 18, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-99-5839

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

Date Filed: June 14, 1999

Parties: Members of the International Air Transport Association

Subject: PTC2 AFR 0059 dated 15 June 1999 Mail Vote 009—Resolution 010o TC2 Within Africa Special Passenger Amending Resolution from Malawi

Intended effective date: 21 June 1999.

Docket Number: OST-99-5842

Date Filed: June 15, 1999

Parties: Members of the International Air Transport Association

Subject: PAC/Reso/405 dated June 2, 1999

22nd PAC—Expedited Resolution 808

Intended effective date: 1 August 1999.

Docket Number: OST-99-5849

Date Filed: June 17, 1999

Parties: Members of the International Air Transport Association

Subject: PTC31 S/CIRC 0068 dated 28 May 1999

South Pacific Resolutions r1-r33 Minutes—PTC31 S/CIRC 0069 dated 15 June 1999

Tables—PTC31 S/CIRC 0020 dated 4 June 1999

Intended effective date: 1 October 1999.

Docket Number: OST-99-5852

Date Filed: June 17, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC2 AFR 0060 dated 18 June 1999

Mail Vote 011—Resolution 010q

TC2 Within Africa Special

Passenger Amending Resolution from Zimbabwe

Intended effective date: 1 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99-16482 Filed 6-28-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 18, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following

⁶ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ The Commission notes that the New York Stock Exchange ("NYSE") employs the same calculation for determining initial fees and annual fees for its foreign issuers. See NYSE Listed Company Manual 902.04.