

responsibilities over its members and it must ensure that its members' businesses operate in a manner that is consistent with the requirements of the Act. Further, the Commission believes that NASD Regulation should review its members with respect to these issues to prevent members from expanding beyond their capabilities to the detriment of the markets and investors.

In conjunction with the new definition of material change in business operations, NASD Regulation has also proposed a safe harbor for certain types of changes in business operations. Specifically, a member can increase the number of associated persons involved in sales or increase the number of offices it operates or increase the number of markets made by the member without having to submit an application pursuant to proposed Rule 1017 so long as the increases fall within the specified limits. The Commission believes that the safe harbor should increase NASD Regulation's, as well as its members', operational efficiency without sacrificing regulatory interests.

NASD Regulation has also proposed changes to Rule 1017 regarding applications for approval of changes in ownership, control or business operations. In its proposal, NASD Regulation clarified the difference between a restriction, which is subject to NASD Regulations' review and approval, and a limitation, which may be set forth in the Business Activities section of a membership agreement and thus not required to be reviewed by NASD Regulation if the safe harbor applies. The Commission finds that this clarifies NASD Regulation's oversight responsibilities with respect to restrictions and limitations and should enhance the ability of its members to operate efficiently within the requirements of NASD Regulation's rules. Further, this clarification should assist members in determining whether they are eligible to utilize the safe harbor for their planned business changes.

In addition, proposed Rule 1017 makes the application process for changes in a member's structure more efficient by discontinuing NASD Regulation's review of certain changes that are already reviewed by the NYSE. This change eliminates duplicative oversight. The Commission believes that the NYSE, as part of its self-regulatory responsibilities, should be able to sufficiently review such transactions to ensure that they comply with the requirements of the Act.

In proposed rule 1014, NASD Regulation proposed to require as a condition for membership that an

Applicant provide supervisory procedures that include procedures that ensure that proper registrations are obtained by the firm. This new requirement should ensure that associated persons are adequately trained and supervised, which should enhance investor protections.

In addition, NASD Regulation has proposed as a condition of admission that firms certify that their systems, plans, and procedures are adequate for the firm's business. Thus, as part of its application, an Applicant will be required to provide a description of its communications and operational systems that will be employed to ensure business continuity, including information about systems' capacity, contingency plans and disaster recovery plans. NASD Regulation will use this information to determine, pursuant to proposed Rule 1014(a)(6), whether an Applicant's communications and operational systems are adequate and provide reasonably for business continuity such that the applicant has met the standard for admission to membership. The Commission finds that this new requirement is consistent with the Act and furthers just and equitable principles of trade and should enhance protections for investors. Today, technology is a driving force in the markets. As never before, many firms utilize and rely on technology to perform many roles, such as accepting and routing of customer orders for execution. Thus, it is more important than ever that the technology used by firms be able to operate and have sufficient capacity to carry out its stated functions. Today, a technology failure can have significant consequences both for the customer and the firm. Thus, the Commission believes that it is imperative that NASD Regulation seek to ensure that its members have the systems capabilities to operate in a fashion that is consistent with the requirements of the Act.

Finally, in proposed Rule 1014(d), NASD Regulation has proposed to delete the requirement that members with membership agreements obtain NASD Regulation's approval of any change outside of the membership agreement. The Commission believes that this provision may have given an unfair advantage to those members that do not have a membership agreement.²⁰ The Commission believes that the proposed definition of material change in business operations along with the safe harbor should provide members with the ability to expand their business without raising investor protection

concerns. Further, these provisions provide NASD Regulation with sufficient tools to oversee its members' business operations.

In conclusion, the Commission finds that the proposal is consistent with the requirements of the Act. The proposal, in general, clarifies and organizes the rules in a manner that should be beneficial to members and potential members. Further, the proposed changes should enhance the ability of NASD Regulation to implement its regulatory objectives in a fair and efficient manner.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 2, the NASD Regulation deleted proposed Rule 1018. Therefore, this portion of the proposed rule change is no longer subject to Commission review. In addition, NASD Regulation corrected a typographical error. Therefore, because Amendment No. 2 does not raise any regulatory concerns, the Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2)²¹ of the Act, that the proposed rule change (SR-NASD-99-67) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-21430 Filed 8-22-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43156; File No. SR-NASD-00-49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate CAES Transactions Charges for Member Firms that Receive and Execute Orders

August 15, 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 August

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ See *supra* note 16.

11, 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 has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act,³ 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.

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

Nasdaq proposes to amend NASD Rule 7010 to eliminate Computer Assisted Execution Service ("CAES") charges for member firms that receive and execute orders. Below is the text of the proposed rule change. Proposed new language is in *italics*; deleted language is bracketed.

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(c) No change.

(d) Computer Assisted Execution Services.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charges

No change.

(2) Transaction Charges

[(A) As of November 1, 1997, \$0.50 per execution shall be paid by an CAES market maker that receives and executes a CAES order or any part of a CAES order.]

(A) [(B)] As of January 1, 1998, \$0.50 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part.*

(B)[(C)] As of November 1, 1997, \$1.00 per commitment shall be paid by any member *that* [which] sends [or receives] a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part.*

* As of September 1, 2000, a CAES market maker that receives and executes

a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.

* * As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.

* * * * *

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 eliminate CAES transaction charges for members receiving and executing orders in listed securities effective September 1, 2000. CAES transaction charges for members sending orders that are executed will remain the same. In particular, Nasdaq proposes to reduce the transaction charge to zero for a member that receives a commitment through the CAES and ITS/CAES linkages to buy or sell a listed security that is executed in whole or in part.

CAES allows NASD member firms to direct agency orders in both Nasdaq and exchange-listed securities to market makers for automatic execution. Intermarket Trading System ("ITS")/CAES allows members to transmit and receive buy and sell commitments in exchange-listed securities. The difference between the two is that CAES allows trades among Nasdaq market makers in any CAES-eligible Consolidated Quotation System security, while ITS only permits trades between a Nasdaq market maker and an exchange in listed securities.⁴

Nasdaq believes this proposal potentially will lower the costs investors must pay to trade exchange-listed securities in Nasdaq InterMarket, thereby supporting the competitiveness

of Nasdaq market makers and Electronic Communications Networks in attracting additional retail order flow. The proposal also is intended to provide an incentive (in the form of a no transaction fee execution) to any member providing liquidity in a Nasdaq InterMarket transaction.

The Nasdaq InterMarket operates in a competitive price environment with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE"). Currently, the CHX does not charge a transaction fee to the receiving party for market orders in listed securities sent to the exchange via MAX, the CHX's automated order routing system. Similarly, the CSE does not impose a fee for transactions in Consolidated Tape B (American Stock Exchange) securities. Nasdaq believes it is important for the Nasdaq InterMarket to be able to compete without artificial impediments. For this reason, the ability to meet the competitive price opportunities being provided by the regional stock exchanges by similarly eliminating transaction charges is fundamental to attracting and retaining market participants during this pivotal period of industry growth. It is essential to structure transaction fees in a manner that will encourage a broker/dealer making a first time decision on where to trade listed securities to be able to evaluate the substantial benefits of the Nasdaq InterMarket without pricing disincentives.

2. Statutory Basis

Nasdaq believes that the proposal to eliminate CAES transaction charges for firms that receive and execute orders is consistent with Section 15A(b)(5) of the Act,⁵ which states that NASD rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on 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.

⁴ See CAES/ITS User Guide, p. 5, at <<http://intermarket.nasdaqtrader.com>>.

⁵ 15 U.S.C. 78o-3(b)(5).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁷ because it establishes or changes a due, fee, or other charge imposed by the Association. 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-00-49 and should be submitted by September 13, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-21437 Filed 8-22-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43155; File No. SR-NYSE-00-32]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 15, 2000.

On July 13, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change, pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,² to extend the effectiveness of amendments to Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual with respect to the definition of what constitutes a "broadly-based" stock options plan. The Commission approved the amendments on a pilot basis on June 4, 1999 ("Pilot").³ The Pilot is scheduled to expire on September 30, 2000. The Exchange has proposed to extend the effectiveness of the Pilot until September 30, 2003. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on August 10, 2000.⁴

In response to the solicitation of comments, the Commission received a request to extend the comment period. Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.⁵ Further, the Commission notes that the Exchange has consented to the extension of the comment period.⁶ Accordingly, the comment period shall be extended until September 20, 2000.

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 NYSE. All submissions should refer to File No. SR-NYSE-00-32 and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-21436 Filed 8-22-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43151; File No. SR-NYSE-00-35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

August 14, 2000.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on August 11, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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.

¹ 17 CFR 200.30-(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

⁴ See Securities Exchange Act Release No. 43111, (August 2, 2000), 65 FR 49046.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See letter from Elena L. Daly, Assistant General Counsel, NYSE to Kelly Riley, Division of Market Regulation, SEC, dated August 11, 2000.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).