provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of GSCC and MBSCC.

All submissions should refer to File Nos. SR-GSCC–2002–09 and SR–MBSCC–2002–01 and should be submitted by December 6, 2002.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28989 Filed 11–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46783; File No. SR–NASD–2002–153]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish as Permanent Two Pilot Programs Currently Contained in NASD Rule 6541 Relating to Manning Rule Protection for Customer Limit Orders Executed on the Over-the-Counter Bulletin Board

November 7, 2002.

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 October 25, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its 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. 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 is filing a proposed rule change to establish as permanent two pilot programs currently contained in NASD Rule 6541. Rule 6541, which generally prohibits member firms from trading ahead of customer limit orders in designated Over-the-Counter Bulletin Board (''OTCBB'') securities, was established on a pilot basis for approximately 325 securities quoted on the OTCBB.[3] No new rule language is proposed.

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

On February 8, 2001, the Commission approved NASD Rule 6541, which, on a pilot basis, applied the basic customer limit order protection principles that presently apply to Nasdaq-listed securities to designated securities that are traded on the OTCBB.[4] Rule 6541(a) generally prohibited member firms that accepted customer limit orders in these securities from ''trading ahead'' of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. Rule 6541(b) required member firms to provide a minimum level of price improvement of the lesser of $0.05 per share or one-half of the current inside spread to incoming orders in OTCBB securities if the member chose to trade as principal with those incoming orders while holding customer limit orders. If a member failed to provide the minimum level of price improvement to the incoming order, the member was required to execute its held customer limit orders.

The limit order protection embodied in Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the ''Manning Rule''). In *Manning,* the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more favorable than the customer order.[5] Rule 6541 expands to securities traded on the OTCBB the protections that IM–2110–2 provides to trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to IM–2110–2 in Nasdaq listed securities.[6] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq-listed securities. On July 26, 2001, Nasdaq filed and implemented an amendment to Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement in OTCBB securities.[7] Under SR–NASD–2001–39, the price improvement requirement was narrowed from $0.05 or one-half the inside spread to $0.01 or one-half the inside spread (whichever is less) for a member wishing to trade in front of held customer limit orders that are priced at or inside the current inside spread for an OTCBB security. For customer limit orders priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a member seeking to trade in front of such limit orders to execute its trades at a price at least equal to the inside bid (with respect to held customer limit orders to buy) or inside offer (for held orders to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to customer limit orders that are priced more than $0.01 outside the current inside spread. The amendment to Rule 6541(b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

On November 1, 2001, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[8] Accordingly, any degree of price improvement would relieve a member from the obligation to fill a limit order that is outside of the inside spread. The amendment also clarified that the basic prohibition on trading

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[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR–NASD–00–22).

[4] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR–NASD–00–22).

[5] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988).

[6] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[7] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001) (SR–NASD–2001–39).

[8] *See* Securities Exchange Act Release No. 34–45011 (November 1, 2001); 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

ahead of held limit orders at prices equal or superior to the limit orders applies to limit orders that are priced more than $0.01 away from the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order without filling the limit order applies to all limit orders in OTCBB securities covered by Rule 6541. The amount of required price improvement for limit orders priced at or inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread. The pilots are currently scheduled to expire on December 15, 2002.[9]

Nasdaq has concluded that it is in investors' best interest to establish limit order protection requirements on a permanent basis for all securities quoted on the OTCBB. Nasdaq believes that limit order protection provides substantial protection to small investors by ensuring that members consider those orders when executing their own orders. In addition, Nasdaq believes that limit order protection prevents the isolation of customer limit orders that could otherwise occur when a member trades for its own account and a customer order fails to receive an execution. Nasdaq believes that the rule bolsters investors' confidence in the fairness of the market as a whole.

Nasdaq's Department of Economic Research (''ER'') closely analyzed the impact of the Manning pilot on relevant aspects of the operation of the OTCBB. Nasdaq sought to ensure that the potential negative effects on the trading of OTCBB securities do not offset the positive effects of limit order protection. ER studied the following areas: impact on trading, market maker quoting activity, and spread behavior. To determine the impact of the pilot on trading activity, the study analyzed total volume, number of trades, and number of riskless principal trades (as a proxy for customer limit orders executed). ER studied changes to the number of market makers, quote updates, and bid/ask midpoint to determine that the pilot had no statistically significant impact on market maker quoting behavior. Finally, ER looked at a variety of spread statistics (quoted, effective, relative, relative effective). Overall, ER found no material negative implications on the measurable market quality of the OTCBB.

Based upon this study and its experience with the operation of the Manning rule in securities listed on Nasdaq, Nasdaq has concluded that limit order protection is a necessary and appropriate rule in the OTCBB marketplace. Nasdaq believes that it is a highly visible investor protection advancement that is consistent with the maintenance of a viable, liquid market. Nasdaq believes that the pilot program has effectively demonstrated that limit order protection is not detrimental to trading of less-liquid, low priced securities on the OTCBB. Accordingly, Nasdaq is extending limit order protection to all securities on the OTCBB.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[10] in general, and with Section 15A(b)(6) of the Act[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market, and to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change would 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

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 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–153 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28993 Filed 11–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46786; File No. SR–NYSE–2002–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Transactional Fees for Certain Exchange Traded Funds

November 7, 2002.

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 October 21, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''the Exchange'') filed with the Securities and Exchange

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[9] On January 14, 2002, and again on July 16, 2002, Nasdaq filed to extend the pilot programs. *See* Securities Exchange Act Release No. 45276 (January 14, 2002), 67 FR 2936 (January 22, 2002) (SR–NASD–2002–06); Securities Exchange Act Release 46248 (July 24, 2002), 67 FR 49727 (July 31, 2002) (SR–NASD–2002–95).

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.