

costs of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also reduce fees charged to customers, it believes that the proposed fee changes will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4)¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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 Act,¹⁵ and Rule 19b-4(f)(2) thereunder,¹⁶ in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-00-15 and should be submitted by May 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42687; File No. SR-Amex-99-25]

Self-Regulatory Organizations; Order Granting Approval to Proposed Amendments to the Amex Constitution by the American Stock Exchange LLC Eliminating the Requirement That the Chairman Also Be the CEO

April 13, 2000.

I. Introduction

On July 16, 1999, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposed rule change. In its proposal, Amex seeks to eliminate the requirement that the Chairman also be the Chief Executive Officer ("CEO") of the Exchange. The proposed rule change was published for comments in the **Federal Register** on January 7, 2000.³ The Commission received no comments

on the filing and this order approves the proposal.

II. Description of the Proposal

Article II, Section 4(a) of the Amex Constitution currently requires that the Chairman of the Board also act as the CEO of the Exchange. The Chairman thus performs the standard functions of a Board Chairman, as well as being responsible to the Board for the management and administration of the affairs of the Exchange as CEO.

The Exchange proposes to amend Article II, Section 4(a) of the Constitution to eliminate the requirement that the Chairman also act as the CEO of the Exchange. Amex represents that the NASD's two other subsidiaries (the Nasdaq Stock Market and NASD Regulation), both have non-executive Chairmen. Amex believes that having a non-executive Chairman attend to the functions of a Chairman would allow the CEO to focus on the operations of the Exchange. Nevertheless, the proposal gives Amex the flexibility to choose to have two people fill the Chairman and CEO positions or to have the same person fill these two positions.

As a result of the amendment to Article II, Section 4(a) of the Constitution, Amex made a number of conforming changes to other provisions of the Constitution and rules. Before this proposal, Amex's rules generally did not make a distinction between whether the Chairman/CEO was serving in his capacity as the Chairman or the CEO and used the term "Chairman" for both of these functions. To allow for separate persons to serve as Chairman and CEO, Amex examined its rules and made a determination as to whether a particular function was normally handled by the Chairman or CEO. Based on this examination, Amex then changed the term "Chairman" to CEO when it determined that Chairman/CEO was acting in his capacity as the CEO. Amex had to make choices, however, when the function was properly performed by either the Chairman or the CEO. In addition, Article II, Section 3 (Chairman) and Article II, Section 4(a) (Chief Executive Officer), discussing the selection and authority of the Chairman and CEO respectively, have been appropriately rearranged. Other than splitting the Chairman and CEO roles and making the above-mentioned conforming changes, the Amex represents that there are no substantive changes being made.

III. Discussion

The Commission finds that the proposed rule change is consistent with

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFT 240.19b-4(f)(2).

¹⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 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. 42307 (January 3, 2000), 65 FR 1206.

the requirements of the Act.⁴ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)⁵ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act. In particular, Amex represented that splitting the Chairman/CEO functions will allow the CEO to focus on the operations of the Exchange. The Commission agrees and believes that the proposal should allow the CEO to devote more time to the day-to-day operations of the Exchange.

In approving this rule change, however, the Commission notes that the proposed language now permits the Chairman to be affiliated with a member of the Exchange if separate persons hold the Chairman and CEO positions. As the Commission stated in the order approving the International Securities Exchange LLS's application for registration as a national securities exchange, the affiliation of the Chairman with one of the Exchange's members implicates certain conflicts of interest, or at least gives the appearance of such conflicts.⁶ Amex represented that it made this change to make its corporate governance structure consistent with other NASD entities, such as NASD Regulation, which in 1999 had a Chairman who was affiliated with an NASD member. Amex also represented that the change, other than splitting the Chairman and CEO positions, will have no substantive effect on the operation of the Exchange. Nevertheless, if Amex chooses to split the Chairman/CEO positions and has a Chairman affiliated with a member, Amex's Chairman should avoid actual or apparent conflicts of interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-99-25) is approved.

⁴ In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (File No. 10-127).

⁷ 15 U.S.C. 78s(b)(2).

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

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42672; File No. SR-NASD-00-10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Its Transaction Credit Pilot Program

April 12, 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 March 6, 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 filed an amendment to the proposed rule change on March 31, 2000,³ which amendment replaces and supersedes the original proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 amending NASD Rule 7010 to extend Nasdaq's transaction credit pilot program for an additional six months for Tape A reports and to discontinue the pilot program for Tape B reports. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

7010 System Services

(a)-(b) No Change.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Katherine A. England, Assistant Director, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated March 30, 2000 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the proposed rule change.

(c)(1) No Change.

(2) *Exchange-Listed Securities Transaction Credit.* For a pilot period, qualified NASD members that trade securities listed on the NYSE [and Amex] in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. [To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter.] If an NASD member is so qualified to earn credits based [either] on its Tape A activity, [or its Tape B activity, or both,] that member may earn credits from [one or both (as the case may be, depending on the qualification standards) pools] *the Tape A pool* maintained by the NASD, [each] *such* pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for [each of] Tape A [and Tape B] transactions. A qualified NASD member may earn credits from [such pools] *the Tape A pool* according to the member's pro rata share of the NASD's over-the-counter trade reports in [each of] Tape A [and Tape B] for each calendar quarter starting with [July 1, 1999, and ending with the calendar quarter starting on October 1, 1999] *January 1, 2000, and ending with the calendar quarter starting on April 1, 2000.*

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.