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

The Amex proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing the Commission, the Amex 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. The Amex 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

In 1985, the Exchange implemented the AUTO–EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 2500 option contracts.[3] AUTO–EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.[4] Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index options contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to 250 contracts in permissible order size for AUTO–EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increased.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option class. The Exchange believes that automatic executions of orders for up to 250 contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[5] of the Act, in general, and furthers the objectives of section 6(b)(5),[6][1] 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 cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Exchange 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

The Commission invites interested persons 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 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 Amex. All submissions should refer to File No. SR–Amex–2001–94 and should be submitted by December 6, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28586 Filed 11–14–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45047; File No. SR–NASD–20001–77]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposal to Permit SuperSOES To Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

November 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

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[3] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[4] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 31, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, and an amendment thereto [3] as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice and simultaneously granting approval on a temporary basis to the proposed rule change, as amended.

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

The NASD filed a proposed rule change to amend Rule 4710 to state that if an exchange that trades Nasdaq securities pursuant to unlisted trading privileges (''UTP exchange'' elects not to participate in SuperSOES, SuperSOES will not include the UTP exchange's quoation for order processing and execution and purposes. The text oif the proposed rule change is available from the NASD and from the Commission.

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 NASD included statemenets 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 polaces specified in Item III 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 is proposing to amend NASD Rule 4710 to specify that if a UTP exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP exchange's quotation for order processing and execution purposes. Nasdaq is seeking approval of this rule change as a pilot that would be effective until February 28, 2002.

Background. On January 14, 2000, the Commission approved a rule change to establish the Nasdaq National Market Execution System (''NNMS'').[4] On July 30, 2001, NNMS was implemented for all Nasdaq National Market securities.

NNMS refers to Nasdaq's reconfigured Small Order Execution System named SuperSOES. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares. By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, and with the exceptions discussed below, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.[5]

Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, a subset of Nasdaq market participants, UTP exchanges, as well as Electronic Communications Networks (''ECNs''), continue to have their quotes in Nasdaq accessed through SelectNet and, as such, are not required to accept automatic executions.[6] Whereras Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP exchange. As a result, when a UTP exchange is alone at the best bid/best offer for a particular security, and that UTP exchange is only accessible through SelectNet, SuperSOES will stop processing orders in that security and will hold those orders in queue for up to 90 seconds.

This pause serves two purposes. First, it provides a Nasdaq market participant the opportunity to send a SelectNet liability message to the UTP exchange (if that exchange has chosen to participate in SelectNet [7]), but at the risk of substantial queuing of market and marketable lilmit orders for that security as the Nasdaq market participant awaits a response to its order. Second, it enables a SuperSOES market participant (*i.e.,* market maker, Full Participant ECN, or participating UTP exchange) to join the current best bid/best offer or create a new best bid/best offer.

If, after 90 seconds, a SuperSOES market participant does not join the current best bid/best offer, and the UTP exchange does not respond to its inbound SelectNet order, SuperSOES returns the orders in the queue and the system shuts down for that security. The system will only resume once the UTP exchange responds to orders delivered to its quote, or moves its quote away from the inside.[8] Nasdaq believes that such delays have adversely affected Nasdaq's ability to ensure the proper functioning of its market, as well as the ability of market participants to obtain executions for their customers.

Proposed Amendment. To address these problems, Nasdaq is proposing to amend NASD Rule 4710 to require UTP exchanges that chose to trade Nasdaq securities through Nasdaq market systems to participate fully in the automatic executions through SuperSOES, or paritipate in SelectNet pursuant to existing NASD Rules and have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP exchange elects not to participate in SuperSOES, SuperSOES will trade through the UTP exchange quotation. This will prevent SuperSOES from effectively shutting down the market in that security.

[3] *See* letter from Edward S. Knight, General Counsel, Nasdaq, to Belinda Blaine, Associate Director, SEC dated November 7, 2001 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[5] As originally proposed, market participants were permitted to enter into the modified SelectNet Only: (1) those orders that specify a minimum acceptable quantity for a size that is a least 100 shares greater than the posted quote of the receiving market participant; or (2) All-None-or-None orders that are at least 100 shares greater than the displayed bid/offer size. Since the original proposal, the SEC also approved the entry of non-liability, inferior-priced orders through SelectNet.

[6] ECNs may choose whether or not to take automatic executions through SuperSOES. ECNs that choose to take automatic execution against their quotes through SuperSOES are referred to as ''Full Participant ECNs.'' Full Participant ECNs are not required to take liability orders through Select Net. ECNs that choose not to take automatic execution against their quotes through SuperSOES must conttinue to take delivery of liability orders against their quotes through SelectNet. These ECNs are referred to as Order-Entry ECNs.'' (A ''liability order rdquo; imposes an obligation on the market participant that receives the order to respond to the order in a manner consistent with the Firm Quote Rule (Rule 11Ac1–1 under the Act) (*e.g.,* by executing the order for that market participant's displayed size.).

[7] The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, it relies on the language in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/national Market System Securities Traded on Exchangges on an Unlisted Trading Privilege Basis (''OTC/UTP Plan''), and provides telephone access to its quotes.

[8] To illustrate, assume CHX does not participate in SuperSOES and is alone at the current best bid of $20 for 1,000 shares of ABCD. MMA enters an order into SuperSOES and MMB directs (or preferences) 1,000 shares via SelectNet to CHX. If no other market maker or Full Participant ECN joins the current best bid of $20, SuperSOES stops processing orders in ABCD for 90 seconds. CHX waits 2 minutes before responding to MMB's preferenced SelectNet liability order either by filling or declining the order. (This delay could occur if there are equipment problems at CHX, in Nasdaq, or both.) The result is that the market in ABCD effectively is held up for 2 minutes and SuperSOES is shut off for ABCD after 90 seconds.

UTP exchanges that choose this option would be accessible by telephone as contemplated in the OTC/UTP Plan, or via a mutually agreed-upon alternative bilateral link negotiated by the UTP exchange. Nasdaq states that it welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that the proposal is designed to facilitate 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. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of nonautomatic execution UTP exchanges is necessary for the fair and orderly operation of the Nasdaq Stock Market because it helps reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible through SuperSOES and is alone at the best bid or best offer.

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, 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.

III. 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 the 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–2001–77 and should be submitted by December 6, 2001.

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

The Commission finds that the proposal, as amended, is consistent with Section 15A of the Act, and in particular with paragraph (b)(6), which requires that the rules of a national securities asssociated be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.[10] The proposal will permit SuperSOES to continue providing executions to investor's orders when a UTP exchange is alone at the inside with a quote that cannot be reached through SuperSOES.

Nasdaq has requested that the Commission grant accelerated approval of the proposed rule change because it believes that the potential for shut down in its automatic execution systems is a serious, imminent concern. Up to four additional national securities exchanges plan to begin trading Nasdaq listed securities in the near future.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change, as amended prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. With several UTP exchanges planning to trade Nasdaq securities, the potential for queuing in SuperSOES when a non-automatic execution UTP exchange is alone at the inside will increase.[12]

V. Conclusion

It Is Therefore Ordered pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2001–77) and Amendment No. 1 thereto, are hereby granted accelerated approval, through February 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28587 Filed 11–14–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45023; File No. SR–NYSE–2001–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend Rule 13 on XPress Quote Parameters

November 5, 2001.

I. Introduction

On June 13, 2001, the New York Stock Exchange, Inc. (''NYSE'' 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–4 thereunder,[2] a proposed rule change amending NYSE Rule 13 on XPress quote parameters. The proposed rule change was published for public comment in the **Federal Register** on July 18, 2001.[3] The Commission received two comment letter regarding the proposed rule change.[4] The Exchange submitted a letter responding to comments on October 19, 2001.[5] This order approves the proposed rule change.

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[9] The OTC/UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the OTC/UTP Plan states, in pertinent part, that Plan participants ''shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations.'' *See* Section IX, Market Access, OTC/UTP Plan. This currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the OTC/UTP Plan.

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

[11] 15 U.S.C. 78s(b)(2).

[12] For exchanges that participate in SuperSOES, this is not an issue.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12)

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44539 (July 11, 2001), 66 FR 37509.

[4] Letter from Ari Burnstein, Associate Counsel, Investment Company Institute (''ICI'') to Jonathan G. Katz, Secretary, Commission, dated August 7, 2001 (''ICI Letter''); Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, dated August 29, 2001 (''Peake Letter'').

[5] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated October 18, 2001 (''NYSE Letter'').