

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 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-2003-118 and should be submitted by September 29, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48450; File No. SR-NASD-2003-105]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Implement a Six-Month Pilot Program Establishing Fees for Written Interpretations of Nasdaq Listing Rules

September 4, 2003.

On July 3, 2003, 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"), 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 to implement a six-month pilot program to establish fees for written interpretations of Nasdaq listing rules.³ Notice of the proposed rule change was published for comment in the **Federal Register** on August 4, 2003.⁴ No comments were received on the proposed rule change. This order approves the proposed rule change.

Nasdaq currently provides written interpretations regarding the application of its listing rules to particular sets of facts, at no cost, to issuers who request them. According to Nasdaq, the transactions for which issuers are seeking interpretations have grown in complexity and have resulted in its staff spending an increased amount of time on interpretation letters. In order to address the associated costs, Nasdaq proposes to charge, on a six-month pilot basis, fees for providing written interpretations. Under the pilot, Nasdaq would charge \$2,000 for interpretation letters, with a response generally provided within four weeks. Additionally, Nasdaq would charge a \$10,000 fee for expedited interpretation letters, with a response generally provided within one to four weeks. Nasdaq would not impose fees for requests related to initial listing on Nasdaq or requests for an exception from NASD Rule 4350(i)(2). The Nasdaq Board of Directors will also have the discretion to defer or waive all or any part of the written interpretation fee. Nasdaq has proposed to make the pilot program effective on the latter of October 1, 2003 or the date of Commission approval.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ Specifically, the Commission finds that the proposal is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Nasdaq submitted two amendments to its Form 19b-4 to indicate the review and approval of the proposed rule change by the NASD Board of Governors. The amendments were technical in nature and did not require notice and comment. See letters from John D. Nachmann, Senior Attorney, Nasdaq to Katherine England, Assistant Director, Commission, dated July 23, 2003 and August 1, 2003.

⁴ See Securities Exchange Act Release No. 48236 (July 28, 2003), 68 FR 45865.

⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with Section 15A(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons. The Commission believes that the written interpretation fee is reasonably related to the purpose of covering the costs of providing written interpretations and is fairly allocated among issuers. The Commission also notes that the fee is being implemented on a six-month pilot basis and that Nasdaq will evaluate its impact on issuers at the end of the pilot period and report to the Commission its findings.

Finally, the rule proposal provides the Nasdaq Board of Directors or its designee with the discretion to defer or waive all or any part of the written interpretation fee in order to address exceptional situations where the payment of a fee for an interpretation letter would be inequitable under the circumstances (e.g., in cases of economic hardship). The Commission notes that such discretion may not be used in generally applicable or frequently-replicated situations.⁷

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2003-105) be, and it hereby is, approved, as a six-month pilot, through March 31, 2004.

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

Margaret H. McFarland
Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48456; File No. SR-PCX-2003-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Processing of Market Orders Prior to the Opening of the Primary Market

September 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ See letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (March 27, 2003).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).