

respect to, and facilitating transactions in securities.

The Commission views the Service as providing potential opportunities for international trading via a system operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to section 19(b)(2) of the Act.⁸

Pursuant to Section 19(b)(2) of the Act,⁹ the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that it is appropriate to approve on an accelerated basis the one-year extension of the Service, until October 9, 2003, to ensure the continuous operation of the Service, which is otherwise set to expire on October 9, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-2002-130) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46559; File No. SR-NASD-2002-125]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

September 26, 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 September 20, 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. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 the Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until November 15, 2002.⁶ Accordingly, there is no new proposed rule language.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ Nasdaq confirmed that this proposed rule change only extends the operation of the pilot, and does not change the pilot substantively. Telephone conversation between John Yetter, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Joseph Morra, Special Counsel, and Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission on September 25, 2002.

Nasdaq will implement the proposed rule change immediately.

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 May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.⁷ On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.⁸ Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1 on a pilot basis⁹ after finding that the proposed rule change was consistent with the requirements of the Act, including Section 15A of the Act.¹⁰ Since that time, the pilot period for the rule has been extended on several occasions.¹¹

According to Nasdaq, as a result of the decentralized and electronic nature of

⁷ See Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001) (Notice for SR-NASD-2001-37).

⁸ See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Office Head of MarketWatch, Division, Commission dated July 27, 2001. (Amendment No. 1 to SR-NASD-2001-37).

⁹ See Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (Aug. 3, 2001) (Order granting approval of SR-NASD-2001-37 on a pilot basis).

¹⁰ 15 U.S.C. 78o-3.

¹¹ See Securities Exchange Act Release No. 44870 (Sept. 28, 2001), 66 FR 50701 (Oct. 4, 2001); Securities Exchange Act Release No. 45344 (Jan. 28, 2002), 67 FR 5022 (Feb. 3, 2002); Securities Exchange Act Release No. 45851 (Apr. 30, 2002), 67 FR 31858 (May 10, 2002).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² including Section 15A(b)(6) of the Act,¹³ which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby 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 will 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

In a letter dated July 27, 2001, Instinet Corporation ("Instinet") commented on the proposed rule change as originally proposed and currently in effect.¹⁴ Nasdaq has filed a proposed rule change—SR-NASD-2001-75—to modify the rule in certain respects and to make the rule permanent, and has received no comments on that

proposal.¹⁵ Nasdaq believes that the amendments to the rule proposed in SR-NASD-2001-75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR-NASD-2001-75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) ¹⁶ of the Act and Rule 19b-4(f)(6) thereunder.¹⁷ 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.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through November 15, 2002, while the Commission considers Nasdaq's request for permanent approval. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.¹⁸

¹⁵ See Securities Exchange Act Release No. 45355 (Jan. 29, 2002), 67 FR 5351 (Feb. 5, 2002) (File No. SR-NASD-2001-75).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2002-125 should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46579; File No. SR-NYSE-2002-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Codification of New York Stock Exchange Policies Previously Approved by the Commission and the Reordering of Other Rules

October 1, 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 August 12, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ See Letter from Jon Kroeper, First Vice President—Regulatory Policy/Strategy, Instinet to Jonathan G. Katz, Secretary, Commission dated July 27, 2001.