

Maker ("DPM") for marketing its service and attracting order flow to the CBOE.³

Currently, this marketing fee is applicable to all market-makers to market-maker options transactions.⁴ It has, however, recently come to the attention of the Exchange that this marketing fee makes it unprofitable for market makers to do reversals and conversions in which a market maker trades a given amount of an underlying security against an equivalent number of call/put "combos," *i.e.*, buying the call and selling the put (or vice versa) of the same option class in equal quantities with the same strike price in the same expiration month. In the case of conversion, the market maker buys the put, sells the call, and buys the underlying security. For reversals, the market maker sells the put, buys the call, and sells the underlying security.

Conversions and reversals are popular trading strategies that contribute to market liquidity, but they usually have to be done at a smaller profit margin than other types of trades. When the \$0.40 marketing fee is imposed upon the call/put "combo" transactions, the trades frequently cease to be profitable to execute on the Exchange.

Consequently, the Exchange has decided to exempt from the Marketing Fee section of its Fee Schedule all such call/put "combo" transactions. The Exchange represents that it will use trade data to determine qualifying transactions. While the Exchange has no current plans to require documentation to show that specific trades qualify for this exemption, the Exchange reserves the right to do so in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(4) of the Act⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

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

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

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ upon filing. 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 purpose of the Act.

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 CBOE. All submissions should refer to File No. SR-CBOE-01-09 and should be submitted by April 20, 2001.

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. 34-44096; File No. SR-NASD-01-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq By-Law Definitions of "Broker" and "Dealer"

March 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4² thereunder, notice is hereby given that on March 19, 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 ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

Nasdaq is proposing to amend the definitions of "broker" and "dealer" in Article I of the By-Laws of Nasdaq to conform with the recent changes to the definitions of "broker" and "dealer" in the Act, as amended by the Gramm-Leach-Bliley Act of 1999 ("GLBA").⁴ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

By-Laws of the NASDAQ Stock Market, Inc.

Article I—Definitions

* * * * *

(c) "broker" shall have the same meaning as in section 3(a)(4) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the

³ See Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) File No. SR-CBOE-00-28).

⁴ See *id.*

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii)

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

account of others, but does not include a bank;]

* * * * *

(f) “dealer” shall have the same meaning as in section 3(a)(5) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual’s or entity’s own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person’s own account, either individually or in some fiduciary capacity, but not as part of a regular business;]

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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

The purpose of the proposed rule change is to amend the definitions of “broker” and “dealer” in the By-Laws of Nasdaq to conform to the definitions of “broker” and “dealer” in the Act. Under the proposal, the definitions of “broker” and “dealer” in the By-Laws will incorporate by reference the definitions of these terms as set forth in sections 3(a)(4) and 3(a)(5), respectively, of the Act.⁵

Nasdaq is proposing to amend the definitions of “broker” and “dealer” in its By-Laws in anticipation of changes being made to the Act’s definitions of these terms pursuant to the GLBA. Specifically, Title II of the GLBA, which becomes effective on May 12, 2001, eliminates the long-standing general exception for banks from the definitions of “broker” and “dealer” in the Act. In place of the general exception for banks, the GLBA enumerates a series of exceptions from the definitions of “broker” and “dealer” for certain specified banking activities.⁶

The proposed rule change is necessary to ensure that the definitions of “broker” and “dealer” in the Nasdaq By-Laws remain consistent with the definitions in the Act. Moreover, because the proposed rule change would incorporate by reference the definitions of “broker” and “dealer” as set forth in the Act, it would eliminate the need for any conforming amendments to the definitions of these terms in the By-Laws in the event Congress amends the Act’s definitions in the future.⁷

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁸ which requires, among other things, that the NASD’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 proposal, which conforms the Nasdaq By-Law definitions of “broker” and “dealer” with those in the Act, is consistent with these purposes.

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

The proposed rule change has been filed by Nasdaq as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.⁹ Nasdaq has stated that, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 12, 2001 (more than 30 days from March

19, 2001, the date on which it was filed), and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become immediately effective.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.

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-01-18 and should be submitted by April 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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⁷ In approving the proposed rule change, the Board of Directors of Nasdaq recognized that any future amendments to the Act’s definitions of “broker” or “dealer” would, in effect, result in an identical change to the definitions of these terms in the Nasdaq By-Laws, without requiring any further action by the Board.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78c(a)(4) and (a)(5).

⁶ See *id.*