

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44609; File No. SR-NASD-2001-37]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying the Extent of Nasdaq's Authority To Halt Trading in a Security in Response to Extraordinary Market Activity

July 27, 2001.

I. Introduction

On May 11, 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"), 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 clarify the extent of Nasdaq's authority to halt trading in a security in response to extraordinary market activity that Nasdaq believes may be caused by the misuse or malfunction of an electronic system that is operated by, or linked to, Nasdaq. Notice of the proposed rule change appeared in the **Federal Register** on May 22, 2001.³ Nasdaq submitted an amendment to the proposed rule change on July 27, 2001.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended, on a pilot basis through October 27, 2001.

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed Amendment No. 1, 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, 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 number SR-NASD-2001-37 and should be submitted by August 24, 2001.

III. Discussion and Commission Findings

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 association⁵ and, in particular, the requirements of Section 15A of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act⁷ because it will provide Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

The Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 makes no substantive changes, but merely requests that the Commission approve the proposed rule change on a three month pilot basis. Accordingly, the Commission finds that good cause exists, consistent with Sections 15A(b)(6) of the Act,⁸ and Section 19(b) of the Act⁹ to accelerate approval of Amendment No. 1 to the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰, that the proposed rule change (SR-NASD-2001-37), as amended, be, and it hereby is, approved on a pilot basis through October 27, 2001.

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

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b).

¹⁰ 15 U.S.C. 78s(b)(2).

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. 34-44616; File No. SR-NYSE-2001-08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc. Amending Its Rules To Provide for the Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis

July 30, 2001.

I. Introduction

On April 25, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 amend certain NYSE rules and policies to accommodate the trading of certain exchange-traded funds ("ETFs") on an unlisted trading privileges ("UTP") basis. On May 22, 2001, the NYSE filed Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published in the **Federal Register** on June 5, 2001.⁴ No comments were received on the proposal, as amended. On July 18, 2001, the NYSE filed Amendment No. 2 to the proposed rule change.⁵ On July 27, 2001, the NYSE filed Amendment No. 3 to the proposed rule change.⁶ This order

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the NYSE amended the proposed rule text to reflect the correct wording of current NYSE Rule 36.

⁴ See Securities Exchange Act Release No. 44352 (May 25, 2001), 66 FR 30256 ("Notice").

⁵ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 18, 2001 ("Amendment No. 2"). The NYSE withdrew Amendment No. 2 on July 27, 2001.

⁶ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow,

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44307 (May 15, 2001), 65 FR 28209.

⁴ Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, dated July 27, 2001 ("Amendment No. 1"). Amendment No. 1 requests the Commission to approve the proposed rule change on a three month pilot basis expiring on October 27, 2001.