

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

No written comments were either solicited or received.

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. In addition, the Commission encourages commenters to consider whether: (1) The acceptance of cash or its equivalent should be permitted in any circumstance; (2) there are presently adequate safeguards against the solicitation of gratuities; and (3) all offers of gratuities, whether accepted or not, should be recorded in a timely manner by the employee, and such records should be maintained by his employer. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-97-51 and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39216; File No. SR-NASD-97-72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Extension of the Nasdaq International Service Pilot Program

October 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and approving this proposal on an accelerated basis.

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

The NASD proposes to extend for one year, until October 9, 1998: (1) The pilot term of the Nasdaq International Service ("Service"); and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. The proposal does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1997.

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 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 NASD 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

The NASD proposes to extend for one year, until October 9, 1998, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991² and the Service was launched on January 20, 1992. The pilot has since been extended³ and is set to expire on October 11, 1997.⁴

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time ("ET") on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.⁵ At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to evaluate the Service's operation and consider possible enhancements to the Service to broaden

² See Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991) (order approving File No. SR-NASD-90-33) ("Pilot Approval Order").

³ See Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (order approving File No. SR-NASD-93-50) (extending the pilot operation of the Service for two years through October 11, 1995).

⁴ See Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995) (order approving File No. SR-NASD-95-46) (extending the pilot operation of the Service for two years through October 11, 1997).

⁵ Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all of the obligations of a Service market maker from that time (i.e., 3:30 a.m., 5:30 a.m., or 7:30 a.m. ET) until the European Session closes at 9:00 a.m. ET. See Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR (June 22, 1993) (order approving File No. SR-NASD-92-54).

⁴ 17 CFR 200.20-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1)(1988).

market maker participation. The NASD views the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by the Nasdaq Stock Market, Inc. ("Nasdaq"). Accordingly, The NASD 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.⁶ The NASD believes it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service serves an invaluable role as a critical early warning mechanism in the context of significant changes involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems changes.

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not

⁶ Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical report prescribed in the initial Pilot Approval Order for the Service at six-month intervals.

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

Comments were neither solicited nor received.

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

The NASD has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that the operation of the pilot program for the Service may continue on an uninterrupted basis. In addition, as noted above, the NASD's proposal entails no modification to the International Rules or the Service, which previously were subject to the full notice comment period required by Section 19(b) of the Act when they were approved originally by the Commission. Accordingly, the NASD believes good cause exists to extend the effectiveness of the pilot program for the Service on an accelerated basis.

The Commission finds that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Sections 11A(a)(1) (B) and (C) of the act set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Although there are no market makers participating currently in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. In addition, the NASD has stated that the Service has played a valuable role by providing for the early detection of systems or communications problems when

Nasdaq implements significant changes in its hardware and software systems. Accordingly, the Commission believes that the pilot program warrants an extension to permit possible enhancements that will increase the Service's utility to the investment community.⁷ The NASD must file any changes to the operation of the Service with the Commission pursuant to Section 19(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in order to ensure the continuous operation of the Service through October 9, 1998. The current authorization for the Service expires on October 11, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at 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-97-72 and should be submitted by November 5, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-97-72) is approved through October 9, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

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⁷ The NASD continues to be responsible for supplying the Commission with the statistical reports prescribed in the initial Pilot Approval Order at six-month intervals. However, the supporting documentation is no longer required, unless otherwise requested by the Commission.

⁸ 15 U.S.C. § 78f(b)(2) (1988).

⁹ 17 CFR 200.30-3(a)(12).