since the order was received.[9] The purpose of this policy is to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely related instrument in advance of persons represented in the trading crowd. Without this prohibition, such trading can threaten the integrity of the auction market or disadvantage other market participants. Given the similarity between the facilitation and solicitation rules, the Amex believes that applying the same prohibitions concerning the use of non-public information to the facilitation rule is necessary and appropriate to prevent similar misuse of such information.

(b) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Amex believes that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of 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 data 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 by order approve such proposed rule change, or 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. 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 Amex. All submissions should refer to File No. SR–Amex–99–36 and should be submitted by November 5, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–26890 Filed 10–14–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41990; File No. SR–NASD–99–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Marketable Limit Orders

October 7, 1999.

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 10, 1999, the National Association of Securities Dealers, Inc. (''NASDA'' or ''Association''), through its wholly owned subsidiary Nasdaq Stock Market, Inc. (''Nasdaq '') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. On September 28, 1999, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] 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 Change

Nasdaq is proposing to amend Interpretive Material 2110–2 (''Manning Rule'') of the NASD to provide an exclusion from the Manning Rule for limit orders that are marketable upon time of receipt. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

IM–2110–2. Trading Ahead of Customer Limit Order

(a) General Application

There are no changes to the existing language.

(b) Exclusion for Limit Orders that are Marketable At Time of Receipt

The Association has previously recognized the functional equivalency of marketable limit orders and market orders. Accordingly, it has adopted the following interpretation. IM–2110–2 shall not apply to a customer limit order if the limit order is marketable at the time it is received by a market maker. These orders shall be treated as market orders for purposes of determining execution priority, however, these orders must continue to be executed at their limit price or better.

The exclusion for marketable customer limit orders from the general application of IM–2110–2 is limited solely to customer limit orders that are marketable when received by a market maker. If a customer limit order is not marketable when received by a market maker, the limit order must be accorded the full protections of IM–2110–2. In

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[9] For purposes of Commentary .04, an order to buy or sell a ''related instrument,'' means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made a technical change to the proposed rule language. *See* letter to Richard Strasser, Assistant Director, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated September 24, 1999.

addition, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable it must be accorded the full protections of IM–2110–2.

The following scenario illustrates the application of the exclusion The market in XYZ stock is 25 bid—25¹⁄₁₆ ask, the volume of trading in XYZ stock is extremely active, and Market Maker A (''MMA'') has a queue of market orders to buy and sell. Assume the following order receipt scenario. Each sell market order in the queue is for 1,000 shares and there are not special conditions attached to the orders. MMA then receives a customer limit to sell 1,000 shares at 25. The customer limit order is marketable at the time it is received by MMA. MMA hits another market maker's bid at 25 for 1,000 shares. Normally, IM–2110–2 would require that the customer limit order be executed before the market orders in the queue. However, because the marketable limit order and the market orders should be treated as functionally equivalent in determining execution priority, the marketable customer limit order shall not be given execution priority over the market orders that were already in the queue. When the limit order is executed, however, it must be executed at the limit price or better.

In addition, if in the scenario just described the limit order does not get executed and the inside market in XYZ becomes 24⁷⁄₁₆ bid, the market maker would have to protect the limit order as required by IM–2110–2 if the market maker trades at the limit order price or better.

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

Nasdaq has received several inquiries from members about whether the Manning Rule, which governs trading ahead of customer limit orders, should be applicable in the following situation. A market maker receives a market order to buy or sell a security and thereafter receives a *marektable*[4] customer limit order on the same side of the market. The question is whether the *marketable* customer limit order must be given preference over the first in time market order because of the Manning Rule. Nasdaq believes the answer properly should be no.

An example of a particular order receipt and execution scenario is helpful in understanding the issue, which arises when there are multiple orders in a market maker's order queue.

Assume that the market in XYZ stock is 25 bid—25¹⁄₁₆ ask, the volume of trading in XYZ stock is extremely active, and Market Maker A (''MMA'') has a queue of market orders to buy and sell. Assume the following order receipt scenario. Each sell order in the queue is for 1,000 shares and there are no special conditions attached to the order. MMA then receives a customer limit order to sell 1,000 shares at 25. The customer limit order is marketable at the time it is received by MMA. MMA hits several other market makers' bids at 25 and is filled for a total of 5,000 shares (*i.e.*, MMA has sold 5,000 shares at 25). MMA then executives the first five market orders in its queue based upon time priority (*i.e.*, MMA buys 1,000 shares from each of the first five market orders it received), but does not execute the customer limit order. In hitting the other market makers' bids at 25, MMA has traded at a price that is equal to the limit order price.

Manning Rule

The Manning Rule requires members acting as market makers to handle their customer limit orders with all due care so that market makers do not ''trade ahead'' of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order.

If the Manning Rule is applicable in the scenario described, MMA would be in violation of Manning because it sold shares at 25, which is the limit order price, and did not execute the limit order. MMA, however, did fill the five market orders to sell (*i.e.*, MMA bought shares). To avoid a Manning Rule violation, MMA would have to execute the marketable customer limit order before the market orders, even though the market orders have time priority. If this is done, MMA would not violate the Manning Rule because, even though it sold at the limit order price to another market maker, MMA would have filled the limit order at the limit order price. Nasdaq believes, however, that giving the marketable customer limit order execution priority in order to avoid a Manning Rule violation creates an inequitable result. In the scenario described, the marketable customer limit order would jump ahead of the five market orders that were in the execution queue before the limit order was placed, and as discussed below, Nasdaq believes marketable limit orders and market orders should be treated the same in such a situation.

Proposed Interpretation

Nasdaq does not believe that market orders in the form of *marketable* limit order should be afforded preferential status by virtue of the Manning Rule. This is consistent with positions taken in the past by the Commission and Nasdaq. The Commission recognized the proposition that marketable limit orders and market orders are equivalent when it approved Nasdaq's proposed changes to the Small Order Execution System (''SOES'').[5] These changes were necessary to implement the SEC's Order Handling Rules. Prior to the changes, SOES executed marketable limit orders ahead of market orders in the SOES queue. To eliminate the disparate treatment of substantially identical orders, Nasdaq proposed to redesign SOES so that market orders and marketable limit orders would be executed on a time priority basis. In the order approving the changes, the Commission stated that the amendment would eliminate an unwarranted advantage that customers that place marketable limit orders have over customers that place market orders.[6] The Commission also stated that the changes reflect the functional equivalency of these two types of orders.[7]

In addition, Nasdaq also articulated this position in NASD Notice to

[4] A marketable sell limit order is a limit order to sell a security at a price that is equal to or less than the inside bid, whereas, a marketable buy limit order is a limit order to buy a security at a price that is equal to or greater than the inside ask. For example, a limit order to sell at 25 when the inside bid is 25 or a limit order to buy at 30 when the inside ask is at 30.

[5] Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997) (Order approving SR–NASD–96–43).

[6] *Id.*

[7] *Id.*

Members 97–57.[8] In that Notice of Members, Nasdaq presented several examples of customer order scenarios and addressed members' responsibilities under the Manning Rule, best execution principles, and the SEC Order Handling Rules[9] in executing customers' orders. In analyzing a scenario in which one customer limit order could cross another customer limit order, Nasdaq stated *marketable* limit orders are the equivalent of market orders and should be treated as such under best execution principles, which, in the example described above, dictate that the order that is received first should be executed first.

Accordingly, Nasdaq believes the Manning Rule, which is designed to protect consumer limit orders, should not be applicable to *marketable* customer limit orders because such orders are functionally equivalent to market orders and should be treated as such. To find otherwise would enable orders, which in reality are market orders, to be nominally designated as limit orders and essentially jump the queue of market orders for execution. In fact, in applying the exclusion, Nasdaq would consider it a violation of a market maker's best execution obligation if the market maker executes the marketable customer limit order before market orders that are in the queue.

The proposed interpretation is limited to customer limit orders that are *already marketable when received* by market makers. If the limit order becomes marketable while in possession of the market maker, the limit order would be protected under the Manning Rule.

Finally, nothing in the interpretation alters a market maker's obligation to execute the customer limit order at the limit price or better or to display the order as required by Rule 11Ac1–4 under the Act.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[11] of the Act in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by preventing orders, which in reality are market orders, from receiving execution priority by being nominally designated as limit orders. The proposal would eliminate an unwarranted advantage that customers that place marketable limit orders have over those customers that place market orders.

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, as amended.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f) of Rule 19b–4[13] thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, the proposal is an interpretation that harmonizes IM–2110–2 with the Commission's and the Association's published positions regarding the proper handling of marketable customer limit orders.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

III. 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.[14] 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–99–44 and should be submitted by November 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[8] *See* Answer to Question Number 6 in NASD Notice to Members 97–57 (Interpretations of SEC Order Handling Rules, NASD Limit Order Protection Rules, And Members Best Execution Responsibilities).

[9] *See* Securities Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1+1 and Securities Exchange Act Rule 11Ac1–4, 17 CFR 250.11Ac1–4.

[10] Subject to certain exceptions, Rule 11Ac1–4(b)(2) requires a market maker to display the full price and size of customer limit orders that: (i) would improve the market maker's bid or offer; or (ii) are equal to the market maker's bid or offer, the national best bid or offer and represent more than a de minimis change in the market maker's quoted size. 17 CFR 240.11Ac1–4(b)(2).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41988; File No. SR–NASD–99–58]

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

October 7, 1999.

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 October 6, 1999, 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 Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.