

(j)-(n) No Change

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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

In a continuing effort to provide the most cost-effective trading environment of NASD members, Nasdaq is proposing a pilot program to reduce execution costs for any NASD member who engages in significant trading activity using Nasdaq's SelectNet system. Under the pilot, NASD members who send directed orders through SelectNet that are subsequently executed in whole or in part will be assessed monthly SelectNet directed orders fees as follows: Executions 0-50,000 that month will be assessed at a \$1.00 per execution rate; Executions 50,001-100,000 that same month will be assessed at a \$0.70 per execution rate; and Executions 100,001 or higher that same month will be assessed at a \$0.20 per execution rate. Executions resulting from broadcast messages will continue to be assessed at a \$2.50 per side rate. The pilot, like previous Nasdaq SelectNet fee reductions,<sup>6</sup> responds to dramatic increases in SelectNet execution rates and seeks to synchronize Nasdaq's fee structure with current market activity to achieve material reductions in market participants costs. This pilot program shall run from October 1, 1999, through March 31, 1999, unless further extended or modified by Nasdaq.

#### 2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(5)<sup>7</sup> of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and

other charges among its members and issuers and other persons.

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

Nasdaq does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

## 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 Nasdaq and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change,<sup>10</sup> 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.<sup>11</sup>

## 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, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing also will be

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> See *supra*, note 4.

<sup>11</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR-NASD-99-47 and should be submitted by November 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41984; File No. SR-NYSE-99-37]

### Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. to Revise the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 31, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.<sup>3</sup> For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The NYSE proposes to adopt the revised Form U-4 ("Uniform Application for Securities Industry Registration or Transfer") and the revised Form U-5 ("Uniform Termination Notice for Securities

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A non-substantive amendment was made to the proposal. In this amendment, the NYSE removed language describing certain aspects of the National Association of Securities Dealers, Inc.'s ("NASD") Web CRD policy because the language was inaccurate. Telephone conversation between Mary Anne Furlong, Director, Rule and Interpretative Standards, NYSE, and Joseph P. Corcoran, Attorney, Division of Market Regulation, Commission, on September 9, 1999.

<sup>6</sup> See Exchange Act Release No. 39248 (October 16, 1997); 62 FR 55296 (October 23, 1997).

<sup>7</sup> 15 U.S.C. 78o(b)(5).

Industry Registration').<sup>4</sup> The Forms, submitted as Exhibit A with this proposal, may be examined in the Commission's Public Reference Room and at the Exchange.

## 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 NYSE 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 III below. The NYSE 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 this filing is to request approval of the revised Forms U-4 and U-5 for use at the NYSE. These forms are used by the Exchange as part of its registration and oversight of persons associated with members and member organizations. In addition, information from these forms appears on the Central Registration Depository ("CRD") system, in which the Exchange participates. The CRD is an industry-wide automated system that allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their employment histories.

The revised forms, along with the NASD's plan of implementation of the World Wide Web-based Central Registration Depository ("Web CRD"), were approved by the Commission on June 25, 1999.<sup>5</sup> The revision of Forms U-4 and U-5 was part of the NASD's effort to modernize the CRD system and to streamline the registration and termination process of individuals in the securities industry. The Forms U-4 and U-5 were amended so that they can be submitted electronically through the World Wide Web. In addition, certain disclosure questions on the forms were amended to capture more disciplinary information about potential and current registered representatives. In most cases, individuals seeking registration will be required to fill out and submit an

electronic Form U-4. Further, when an associated person terminates his association with a broker-dealer, the broker-dealer will be required to fill out and submit an electronic Form U-5.

Currently, Forms U-4 and U-5 for persons employed by Exchange members and member organizations that are not also members of the NASD ("non-NASD members") are submitted on paper directly to the Exchange. In the future, however, it is anticipated that non-NASD members will be able to file the forms electronically through Web CRD.

To allow Web CRD to efficiently process the revised forms, NASD made certain formatting and technical changes to the original electronic forms that were approved by the Commission in 1996, but not made effective because the NASD decided to change the technology they were going to use to modernize the CRD system. In addition to reformatting the Disclosure Reporting Pages, the substantive amendments to the form involve changes, which were described in SR-NASD-98-96, to certain disclosure questions. In particular, the Form U-4 question eliciting information on settled customer complaints was expanded to include oral complaints involving sales practice allegations that are settled for \$10,000 or more.<sup>6</sup> Additionally, two Form U-5 questions were expanded to elicit information on criminal or regulatory actions initiated on the basis of events that occurred while an individual was employed by a firm, even if the actions were initiated after the individual had been terminated.<sup>7</sup>

The Exchange believes that the revised Forms U-4 and U-5 will assist the Exchange in its registration and oversight functions by providing more detailed reporting concerning persons associated with members and member organizations. Moreover, in the future, it is anticipated that non-NASD members of the NYSE will be able to file the forms electronically through Web CRD.

#### 2. Statutory Basis

The Exchange believes that the use of the revised Forms U-4 and U-5 is consistent with Section 6(b)(5)<sup>8</sup> of the Act because the use of standard registration forms fosters cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the information reported on the forms assists the Exchange in its responsibilities under Section 6(c)<sup>9</sup> of

the Act, which requires that an Exchange deny membership to persons subject to a statutory disqualification or persons who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or persons who have engaged in acts or practices inconsistent with just and equitable principles of trade.

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

The Exchange believes that the proposal does not impose 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 NYSE. All submissions should refer to File No. SR-NYSE-99-37 and should be submitted by November 5, 1999.

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

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder<sup>10</sup> applicable to a national

<sup>4</sup> The revised Forms U-4 and U-5 were approved by the Commission on June 25, 1999. See Release No. 34-41560 (June 25, 1999), 64 FR 36059 (July 2, 1999) (File No. SR-NASD-98-96).

<sup>5</sup> *Id.*

<sup>6</sup> Question 23I(2) on the Proposed U-4.

<sup>7</sup> Question 16 and 17 on the Proposed U-5.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(c).

<sup>10</sup> Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The Commission notes that the forms and the CRD system provide self-regulatory organizations, including the NYSE, with a

securities exchange. In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5)<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, not to permit unfair discrimination among customers, issuers, brokers or dealers, and, in general, to protect investors and the public interest.

Additionally, the Commission believes that the revised Forms U-4 and U-5 will assist the Exchange in its registration and oversight functions by providing the Exchange with more relevant information about persons associated with members and member organizations. Moreover, in the future, it is anticipated that non-NASD members of the NYSE will be able to file the forms electronically through Web CRD. Electronic filing should help expedite the registration process for non-NASD members.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the forms have previously been approved by the Commission and are currently in effect.<sup>12</sup> The Commission also notes that the previous filing was submitted for the requisite notice and comment period, and the commission received no public comments. Furthermore, the proposed rule change raises no new issue of regulatory concern. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6<sup>13</sup> of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSE-99-37) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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centralized and efficient means of maintaining information on member firms and their associated persons. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See *supra* note 4.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41992; File No. SR-NYSE-99-22]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Equity-Linked Debt Securities

October 7, 1999.

#### I. Introduction

On May 28, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending Paragraph 703.21 of its Listed Company Manual ("Manual"), the listing of equity-linked debt securities ("ELDS").

The proposed rule change was published for comment in the **Federal Register** on July 14, 1999.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The Exchange is proposing to amend its listing criteria for ELDS. The amendment deals with the minimum required term of such securities, and substitutes a one-year minimum for all ELDS (domestic and non-U.S.) for the current requirement that the securities have a term of two to seven years (three year maximum for non-U.S. securities).

ELDS are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock. Because ELDS are a derivative product related to the underlying stock, the Exchange trades ELDS on the equity trading floor together with the underlying stock (if such stock is listed).

Paragraph 703.21 of the Manual details the Exchange's listing standards for ELDS. Among other things, these standards require that the ELDS have a term of two to seven years, but not more than three years for ELDS based on the price of a non-U.S. issuer. The Exchange initially proposed these limits as a conservative measure to help ensure that the trading of ELDS does not have an adverse effect on the liquidity of the underlying stock, and is not used in a

manipulative manner. The limits on the terms for ELDS contrast with the Exchange's general requirements for derivative instruments. Specifically, for warrants (Paragraph 703.12 of the Manual), foreign currency and currency index warrants (Paragraph 703.15 of the Manual), contingent value rights (Paragraph 703.18 of the Manual) and "other securities" (Paragraph 703.19 of the Manual), the Exchange requires only that the security have a minimum life of one year.

#### III. Discussion

After careful review, 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 exchange,<sup>4</sup> and in particular, with the requirements of Section 6(b)(5).<sup>5</sup> Specifically, the Commission finds that providing for a minimum one year term for all ELDS is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that it will be less confusing for issuers and investors alike and beneficial to the mechanism of a free and open market, if the listing standards for ELDS conform to the listing standards of the Exchange's other hybrid products found in Section 703 of the Manual.<sup>6</sup> Generally those securities share the following listing criteria: 1 million of the applicable security outstanding, at least 400 holders, at least \$4 million aggregate market value, and a minimum life of one year.<sup>7</sup>

The Commission notes that in the nearly six years that the Exchange has traded ELDS, the Exchange has not discovered any adverse effects of this instrument. In addition, the Exchange has verified that it has adequate surveillance procedures to monitor for possible manipulation of ELDS as well as the related equity securities.<sup>8</sup> The Exchange has also agreed to notify the Commission in advance if the Exchange intends to list ELDS of a non-U.S. company issuer and the issue has a term

<sup>4</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> See Manual Paragraphs 703.12 (warrants), 703.15 (foreign currency and currency index warrants), 703.18 (contingent value rights), and 703.19 (other securities).

<sup>7</sup> *Id.* Other requirements may also apply.

<sup>8</sup> Telephone conversation between Vincent Patton, Assistant Vice-President, Structured Securities, NYSE, Judy Bryngil, Vice-President, Market Trading Analysis, NYSE, and Terri Evans, Attorney, Division of Market Regulation ("Division"), Commission, on July 23, 1999.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 41608 (July 8, 1999), 64 FR 38063 (July 14, 1999).