

A, B, and C below, of the most significant parts 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 specifically provide in Rule 24A.4 for the listing and trading of FLEX Options on all indices, both broad-based and narrow-based on which the Exchange lists and trades on all Non-FLEX options or warrants. On February 24, 1993, the Commission approved the Exchange's FLEX™ Options framework⁴ and has since approved rule changes permitting the Exchange to list and trade FLEX Options based on the Russell 2000 Index, the Nasdaq[®] 100 Index, the S&P 100 and the S&P 500 indices, the NYSE Composite Index, the Dow Jones Industrial Average, and the Dow Jones Transportation Average. The Exchange now proposes to provide for the trading of FLEX Options on all indices traded on the CBOE.⁵

All of the Exchange's rules now applicable to FLEX Index Options will apply to the additional FLEX Indices. The Exchange is proposing to expand the trading of FLEX options because the Exchange believes this will provide trading opportunities which currently are not available on the CBOE. Additionally, it will increase the Exchange's competitiveness with the over-the-counter market place and other exchanges which have expanded FLEX Options trading on indices.⁶

The Exchange is deleting the list of index options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index that has been approved for Non-FLEX options trading or warrant trading on the Exchange. This change is consistent with Amex Rule 903G(a)(1). The Exchange is likewise deleting the list of index options set forth in Rule 24A.4(a)(2)(i). This change is consistent

⁴ See Securities Exchange Act Release No. 31920, 58 FR 12280 (March 3, 1993).

⁵ Rules on trading FLEX Options are set forth under CBOE Rule 24A.

⁶ On April 28, 1998, the Commission approved the American Stock Exchange's ("Amex") proposal to list and trade Flex options on all Amex indices. See Securities and Exchange Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998). On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's ("Phlx") proposal to establish Phlx Rule 1079 providing for the trading of FLEX Options on equities and narrow-based and broad-based indices. See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

with Amex Rule 903G(a)(2)(i) and Phlx Rule 1079(a)(1). When the CBOE files a proposed rule change to list and trade a new Non-FLEX index option product, it will also propose to list and trade the FLEX index options in the same filing.⁷

2. Statutory Basis

Because the proposal to expand the trading of FLEX options to all Exchange Indices will provide trading opportunities which currently are not available on the Exchange, the CBOE believes that the proposed rule change is consistent with the provision of Section 6(b) of the Securities Exchange Act of 1934,⁸ in general, and Section 6(b)(5)⁹ in particular, in that it is designed to facilitate transactions in securities, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

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

CBOE does not believe that the proposed rule change will impose a burden on competition that is 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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the 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 for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. Any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if

⁷ The Commission notes that in any proposal to trade a new FLEX Index Option, the CBOE must propose the position and exercise limits that will apply in accordance with CBOE Rules 24A.7 and 24A.8.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.¹²

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to SR-CBOE-00-26 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,

Secretary.

[FR Doc. 00-20095 Filed 8-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43107; File No. SR-NASD-00-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Nasdaq Application of the OptiMark System.

August 2, 2000.

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 June 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

“Association”) through its subsidiary The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 filing this proposed rule change to seek permanent approval of the Nasdaq Application of the OptiMark System (“Nasdaq Application” or “Application”) without any restrictions on the trading activity to be conducted through the facility.

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

a. Summary of Nasdaq’s Application of the OptiMark System

Since October 1999, Nasdaq has operated a new Nasdaq facility called the Nasdaq Application of the OptiMark System (“Nasdaq Application” or “Application”).³ The Application is a screen-based trading service intended for use by NASD members and other non-member users. The Application employs technology developed by OptiMark Technologies, Inc. to provide a computerized mechanism designed to satisfy the trading desires of all market participants, including retail and institutional investors as well as broker-dealers. The Application enables these participants to anonymously represent their trading interest across a full

³ The OptiMark System was developed by OptiMark, Inc. a computer technology firm located in Jersey City, New Jersey, based on certain patent-pending technology referred to as “The OptiMark™ System.”

spectrum of prices and sizes, and performs a sophisticated, computer-based, optimal search and match for liquidity in securities listed on Nasdaq.⁴

The Application is available to all Nasdaq market participants and is in addition to existing Nasdaq trading systems. Specifically, the Nasdaq Application is available to any NASD member who chooses to become a User and complies with all applicable rules. A User is a subscriber who has entered into an agreement with Nasdaq and OptiMark Services, Inc. to access the Application. In addition, a non-member may become a User provided it is authorized in advance by one or more NASD members who agree to sponsor the non-member. A non-member User or a member User that is not self-clearing must establish a relationship with a clearing broker that can be deemed a Designated Broker.⁵ Orders from sponsored Users are routed, executed, and reported in the Designated Broker’s name. To allow a sponsored User to enter a Profile into the Application, Nasdaq must have on file an agreement signed by a Designated Broker stating that the Designated Broker is willing to act in this capacity for a particular User. These agreements include any applicable credit limits imposed by the Designated Broker on the sponsored User.⁶ The Designated Broker is responsible for all of its sponsored Users’ orders and resulting transactions.

Transactions that result from matches through the Application will be cleared using Nasdaq’s post-execution service, the Automated Confirmation Transaction Service (“ACT”). Accordingly, final locked-in trades will be forwarded to The Depository Trust and Clearing Corporation (“DTCC”) in the ordinary course, and will clear and settle the regular way through DTCC, just as any other transaction executed on Nasdaq.⁷ All Users will receive a

⁴ For a more complete discussion of the operation of the Nasdaq Application, see Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999) (“OptiMark Approval Order”).

⁵ A member user that is not self-clearing is referred to as a correspondent User. Correspondent Users and non-member Users are collectively referred to as sponsored Users.

⁶ A User’s credit limits, as such limits may be established from time to time by a Designated Broker/Clearing Broker, will be programmed into the OptiMark System. The Designated Broker will be alerted to its potential exposure to its Users, individually or in the aggregate, approaches the established credit limits (“Alarm Threshold”) or reaches the limit at which the Designated Broker will no longer permit a User to submit Profiles (“Trading Limit”).

⁷ DTCC was formed by the recent combination of The Depository Trust Company and the National Securities Clearing Corporation.

report of any execution resulting from a match of the Profiles submitted by them (including Profiles generated from a quote in the Nasdaq Quote Montage) as soon as possible after the execution takes place. Users that are not self-clearing will have the option of re-allocating for clearing purposes all or a portion of any execution to another broker by the end of the trading day. If the User has designed a trade as set for end-of-day release (*i.e.*, has chosen to re-allocate all or a portion of any trade or trades for clearing purposes), the Designated Broker generally will be notified promptly after the close of the trading day to the extent it has been allocated for clearing purposes any transaction resulting from a Profile submitted by a User sponsored by that Designated Broker.

It is important to note in the comparison, clearance and settlement process, that although the specific identity of the counterparties to a particular trade will be temporarily masked until 4:30 p.m. of the trade day, the Designated Broker that agreed to sponsor a User in the Application is fully responsible for the clearance and settlement of that trade. Nasdaq and the operator of the Application are not responsible for either the User or a Designated Broker failing to pay for or to deliver the securities traded through this facility. Rule 4994(b) clearly states that responsibility for clearance and settlement remains with the Designated Broker. The User and Designated Broker Agreements that each party must sign prior to entering a Profile into the Application likewise make clear that it is the Designated Broker’s responsibility to clear and settle the trades, and that the Designated Broker must evaluate the ability of Users to settle trades when it authorizes a User to submit Profiles under its sponsorship.

b. SEC Approval Order

On September 30, 1999, the SEC approved the Nasdaq Application as a pilot program for six months ending on April 3, 2000.⁸ Nasdaq commenced operation of the Application in October 1999 for 10 securities and has recently expanded the application to include a total of 205 securities.⁹ The Commission recently extended the pilot program for an additional six month period.¹⁰ The order initially approving the Nasdaq Application includes several trading

⁸ See OptiMark Approval Order, *supra* note 4.

⁹ See Nasdaq Head Trader Alert 2000-38 (May 23, 2000). Nasdaq Head Trader Alerts are available at <http://www.nasdaqtrader.com/Trader/News/headtraderalerts>.

¹⁰ See Securities Exchange Act Release No. 42618 (Apr. 4, 2000); 65 FR 19420 (Apr. 11, 2000).

parameters that limit the operation of the facility until Nasdaq refines the Application's risk management tools. The Commission, along with other market participants, was concerned that some of the ACT risk management tools were not available to monitor transactions executed in the Application. The trading parameters include the following: (1) a limitation on trading to 250 of the most actively traded Nasdaq securities; (2) a limitation on cycle frequency to once every five minutes; (3) a suspension of trading in the Application for 15 minutes if its volume equals or exceeds 12.5% of the average Nasdaq volume in the 250 securities; and (4) suspension of trading in the Application for the remainder of the trading day if its volume equals or exceeds 15% of the average Nasdaq volume in the 250 securities.¹¹

c. Proposed Changes

Nasdaq has developed several modifications to the Application's risk management systems to address the SEC's concerns. Accordingly, Nasdaq seeks to rescind Rule 4999, which contains the trading parameters mentioned above, and seeks approval of the Application on a permanent basis without any of the restrictions contained in Rule 4999.

The first modification enables clearing brokers that are Designated Brokers under the Application's rules ("Designated Brokers/Clearing Brokers") to require correspondent and non-member Users to use the "immediate release" instruction on transactions effected through the Application. This requirement would be specified in the Designated Broker Consent Agreement that each user must execute. The immediate release instruction prevents the User from selecting the end-of-day option discussed earlier. Therefore, this instruction prevents the User from re-allocating a trade from one Designated Broker/Clearing Broker to another at the end of the trading day. In this way, Designated Brokers/Clearing Brokers will be given the ability to know immediately after a trade is done that a sponsored User that the Designated Broker/Clearing Broker allowed to use the Application has completed a trade under the Designated Broker/Clearing Broker's name. To facilitate this flow of information to the Designated Broker/Clearing Broker, the Application has also been modified to permit a one-sided give-up¹² when immediate release instructions have been specified.

The second modification permits Designated Brokers/Clearing Brokers to modify directly through Nasdaq's Act system the Application trading limits that they establish for their Users. As originally constructed, the Application did not permit a Designated Broker/Clearing Broker to adjust a trading limit through ACT's Risk Management system. Instead, Designated Brokers/Clearing Brokers were required to send messages through the electronic data interface or call the Nasdaq/OptiMark desk to change the limits. Nasdaq has developed a new interface between the Application and ACT that permits a Designated Broker/Clearing Broker to directly query and adjust, through the ACT system, the trading limits it establishes in the Application.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)¹³ and section 11A¹⁴ of the Act.

Section 15A(b)(6)¹⁵ requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 11A(a)(1)¹⁶ sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Section 11A(a)(1)(C)¹⁷ states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (iv) the practicability of brokers executing

Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78k-1(a)(1).

¹⁷ 15 U.S.C. 78k-1(a)(1)(C).

investors' orders in the best market; and (v) an opportunity for investors orders to be executed without the participation of a dealer.

The Commission previously recognized that the Nasdaq Application is consistent with sections 15A¹⁸ and 11A¹⁹ of the Act when it approved the pilot program.²⁰ The Application was approved as a pilot program with the limitations discussed above because the Commission, along with other market participants, was concerned that the Application did not provide Designated Brokers/Clearing Brokers with the same type of risk management tools that were available to these firms when transactions were executed outside of the Application. Specifically, the commission was concerned that Designated Brokers/Clearing Brokers did not have the ability to monitor their intra-day risk.

The immediate release function provides a Designated Broker/Clearing Broker with immediate notice that a trade has been executed by one of its sponsored Users and prevents Users from re-allocating trades to other Designated Brokers/Clearing Brokers at the end of the day. Consequently, Designated Brokers/Clearing Brokers are able to monitor their Users' positions on an intra-day basis, which provides these brokers with the opportunity to manage and mitigate their risk. Nasdaq believes this function directly addresses the Commission's concern about the Application's risk management tools. In addition, Nasdaq believes the immediate release function coupled with the one-sided, give-up capability strikes the appropriate balance between a Designated Broker/Clearing Broker's need to manage its risk and its sponsored User's desire to trade anonymously. In a one-sided, give-up situation, the identity of the sponsored User is immediately disclosed to the Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

Furthermore, Designated Brokers/Clearing Brokers will now be able to use the ACT system to query or adjust the credit limits they set for their sponsored Users. Designated Brokers/Clearing brokers previously were required to call the Nasdaq/OptiMark desk or submit instructions through an electronic data interface. The ACT system provides Designated Brokers/Clearing Brokers with a more efficient mechanism to

¹⁸ 15 U.S.C. 78o-3.

¹⁹ 15 U.S.C. 78K-1.

²⁰ See OptiMark Approval Order, *supra* note 7.

¹¹ See OptiMark Approval Order, *supra* note 7.

¹² In a one-sided give-up, the identity of the sponsored User is immediately disclosed to the

query or change the credit limits they have set.

Nasdaq expects that the systems change necessary to implement the features described above will be in place in the third quarter of 2000. Because these changes address the issues raised by the commission in its approval order, Nasdaq believes that the trading parameters contained in the approval order and reflected in Application rule 4999 can be eliminated. Further, Nasdaq believes that the Application should be permanently approved because the only concerns that were raised during the approval process have been addressed.

(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

The Association has neither solicited nor received written comments.

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 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 such 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, including whether the proposal 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 the file number SR-NASD-00-37 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-20057 Filed 8-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43103; File No. SR-NASD-00-44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules, and To Issue an Interpretation Regarding Net Trading

August 1, 2000.

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 July 31, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1)⁴ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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

Nasdaq's proposes to delay until November 1, 2000 the implementation date of the riskless principal trade reporting rule changes announced in SR-NASD-98-59⁵ and SR-NASD-98-08,⁶ and the interpretations thereto filed in SR-NASD-99-39,⁷ SR-NASD-99-52,⁸ and SR-NASD-00-06.⁹ Nasdaq also is proposing an interpretation to clarify a statement in *Notice to Members 99-65*.

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 its proposal and discussed any comments it received regarding the proposal. 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

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter ("OTC") equity securities, and exchange-listed securities traded in the Nasdaq InterMarket ("Riskless Principal Trade Reporting Rules").¹⁰ Under the new Riskless Principal Trade Reporting Rules, a "riskless" principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR-NASD-98-59, the Commission asked Nasdaq to submit an interpretation providing

⁵ Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

⁶ Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

⁷ Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

⁸ Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

⁹ Securities Exchange Act Release No. 42494 (March 3, 2000), 65 FR 15933 (March 24, 2000).

¹⁰ See footnotes 5 and 6, *supra*.