

the Commission finds that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposal on an accelerated basis.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act¹² that the proposed rule change (SR-Amex 00-37) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43152; File No. SR-Amex-00-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, LLC in Option Transaction Fees for Options on Nasdaq-100 Index Shares

August 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and rule 19b-4 thereunder,² notice is hereby given that on July 28, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act,³ 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.

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

The American Stock Exchange LLC proposes to revise specialist and Registered Options Trader Fees for transactions in Nasdaq-100 Index Share options. The text of the proposed rule change is available upon request at the Exchange or the Commission.

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 Exchange 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. Transaction charges vary, depending on whether they involve an equity or index option. They also vary depending upon whether a charged transaction is executed for a specialist or market maker account; a member firm's proprietary account; a non-member broker-dealer account; or a customer account. In addition, the Amex imposes a charge for clearance of options trades as well as an options floor brokerage charge. These charges also depend upon the type of account for which a trade is executed. All three types of charges—transaction, options clearance and options floor brokerage—are subject to caps⁴ based on the number of options contracts traded on a given day. Currently, no transaction, comparison or floor brokerage fees are charged for customer equity option transactions.

To offset the costs of providing for the trading of, and to enhance the marketing of options on, Nasdaq-100 Index Shares, the Exchange proposes to raise fees charged to specialists and Registered Options Traders ("ROTs") for transactions in which a public customer⁵ is a party to the trade. Specifically, the transaction fee charged the specialist and ROTs, currently \$0.17 per contract side, would increase by \$0.30 per contract side to \$0.47, but only for transactions in which a public customer is a party. Options comparison

⁴ Current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

⁵ Under the proposed rule change, "public customer" would mean a non-broker-dealer. This is the same meaning the term has under Amex rule 958a.

and floor brokerage fees for the specialist and ROTs will remain unchanged at \$0.04 and \$0.03 per contract side, respectively. The Exchange represents that the proposed increases are necessary to allow the Exchange to better provide for the costs associated with trading and enhancing the marketing of options on Nasdaq-100 Index Shares.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁷ because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

B. Self-Regulatory Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b-4(f)(2) thereunder. At any time within 60 days of the filing of such proposed rule change, 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 the furtherance of the purposes of the Securities Exchange Act of 1934.

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, N.W., Washington, D.C. 20549-0609. Copies of

⁶ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 240.19b-4.

¹² 15 U.S.C. 78f(b)(2).

¹³ 17 CFR 200.30(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)(ii).

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. 522, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. 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-0039 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43157; File No. SR-NASD-99-67]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by NASD Regulation, Inc. Relating to its Membership Rules

August 15, 2000.

On November 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") and rule 19b-4² thereunder, a proposed rule change amending NASD Rule 1010 Series, which contains the provisions relating to the admission to membership. On May 1, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by

Amendment No. 1, was published for comment in the **Federal Register** on June 12, 2000.⁴ The Commission received no comments on the proposal. On August 11, 2000, NASD Regulation submitted Amendment No. 2 to the proposed rule change.⁵ This order approves the proposal.

II. Description of the Proposal

NASD Regulation proposes to amend its Rule 1010 Series, which governs admission to NASD membership.

A. Proposed Rule 1010—Definitions

In addition to clarifying and conforming changes to certain current definitions, NASD Regulation has proposed the following new definitions.

1. "Material Change in Business Operations"

NASD Regulation has proposed to define of the phrase "material change in business operations" in proposed Rule 1011(i). As proposed, a "material change in business operations" shall include, but not be limited to, removing or modifying a membership agreement restriction; market making, underwriting, or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital. This proposed definition is significant because it will require a member to apply to its district office for approval of a material change in business operations pursuant to proposed Rule 1017.

In conjunction with the proposed definition, NASD Regulation has proposed Interpretative Material 1011-1 (IM-1011-1) to create a safe harbor for certain business expansions that will not be presumed to be material, and therefore will not require a member to submit an application for approval of the proposed expansion pursuant to proposed Rule 1017. The safe harbor would not be available to members that have a disciplinary history, which is proposed to be defined as a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign regulatory authority of one or more of the following provisions (or comparable foreign provisions) or rules or regulations thereunder: Sections

15(b)(4)(E)⁶ and 15(c)⁷ of the Act (failure to supervise; fraud and manipulation); section 17(a)⁸ of the Securities Act of 1933 (fraudulent interstate transactions); Exchange Act Rule 10b-5⁹ (fraud and manipulation); Exchange Act Rules 15g-1 through 15g-9¹⁰ (penny stock rules); NASD Rules 2110 (just and equitable principles of trade), 2120 (fraud and manipulation), 2310 (suitability), 2330 (protection of customer securities and funds), 2440 (fair prices and commissions), 3010 (failure to supervise), 3310 (manipulative and deceptive quotations), 3330 (payments to influence market prices); and MSRB Rules G-19 (suitability), G-30 (prices and commissions), and G-37 (b) and (c) (political contributions).

Further, because NASD Regulation cannot predict and draft an exhaustive definition of all changes that may in fact be material, if a change in a member's business falls outside of the definition, or the safe harbor (e.g., because the change exceeds the safe harbor limits or because the member has a disciplinary history), members may contact their NASD district office to inquire as to whether the district would deem the change to be material. A member is not required, however, to contact the district office if the member believes that a change would not be considered material. If the staff later determines that a change is indeed material, then the member could potentially be subject to disciplinary action for failure to file an application under proposed Rule 1017.

2. "Principal Place of Business"

NASD Regulation has proposed to define the phrase "principal place of business" for purposes of clarifying where an Applicant's¹¹ application will be processed, in proposed Rule 1011(l). As proposed, an Applicant's principal place of business shall be the location where the officers, partners, or managers direct and control the activities of the Applicant, unless NASD Regulation staff designates a different location, which may be where the largest number of associated persons are located or

⁶ 15 U.S.C. 78o(b)(4)(E).

⁷ 15 U.S.C. 78o(c).

⁸ 15 U.S.C. 78q(a).

⁹ 17 CFR 240.10b-5.

¹⁰ 17 CFR 240.15g-1 through 15g-9.

¹¹ The term Applicant is defined as a person that applies for membership in the Association under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. See Rule 1011(a).

⁴ Securities Exchange Act Release No. 42885 (June 1, 2000), 65 FR 36860.

⁵ See letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated August 9, 2000 ("Amendment No. 2"). In Amendment No. 2, NASD Regulation corrected a typographical error and deleted proposed Rule 1018 in its entirety.

⁸ 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 Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2000 ("Amendment No. 1").