

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44000; File No. SR-CHX-00-27]

Self-Regulatory Organization; Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Participation in Crossing Transactions Effected on the Exchange Floor

February 23, 2001.

I. Introduction

On September 14, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to participation in crossing transactions effected on the exchange floor. The CHX amended the proposal on January 18, 2001.³ The **Federal Register** published the proposed rule change, as amended, for comment on February 2, 2001.⁴ The Commission received no comments on the proposal. This order approves the proposal on an accelerated basis.

II. Description of Proposal

The Exchange proposes to amend Article XX, Rule 23 of the Exchange's rules relating to participation in crossing transactions in Nasdaq/National Market ("NNM") securities effected on the floor of the Exchange. This proposal is currently operating, on a pilot basis through February 28, 2001, for Dual Trading System issues traded on the Exchange.⁵ This pilot was approved in connection with the securities industry's move to a decimal pricing environment. The proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter dated January 16, 2001, from Kathleen M. Boege, Associate General Counsel, CHX, to Alton S. Harvey, Office Head, Division of Market Regulation, Commission ("Amendment No. 1"). Amendment No. 1 requests pilot approval of the proposed rule change through July 9, 2001.

⁴ Securities Exchange Act Release No. 43882 (January 24, 2001), 66 FR 8819.

⁵ Dual Trading System issues are issues that are listed on either the New York Stock Exchange or the American Stock Exchange. See Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (approving SR-CHX-00-13 on a pilot basis through February 28, 2001). The proposed rule change deletes the provisions of Article XX, Rule 23 that govern cross transactions in NNM issues, and, thus, has the effect of also extending the pilot program in Dual Trading System issues until July 9, 2001.

change would extend the pilot to cover crossing transactions in NNM securities.

Under current CHX Rule 23, if a floor broker presents a crossing transaction involving NNM issues, another member may participate, or "break up," the transaction, by offering (after presentation of the proposed crossing transaction) to better one side of the transaction by the minimum price variation. The floor broker is then effectively prevented from consummating the transaction as a "clean cross." In instances where the minimum price variation is relatively small, it is very inexpensive for a member to break up crossing transactions in this matter.

Under the proposed pilot program, a floor broker will be permitted to consummate cross transactions in NNM issues, as well as Dual Trading System issues, involving 5,000 shares or more, without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security.⁶ These requests will place the specialist and other market makers on notice that the floor broker is intending to "cross" within the bid-offer spread. The proposed rule change will operate on a pilot basis through July 9, 2001.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with the section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.⁹

The Commission believes that the proposed rule change strikes a reasonable balance between the ability of floor brokers on the Exchange to execute crossing transactions and the ability of specialists and market makers to provide price improvement. In addition, the Commission believes that requiring floor brokers to request a quote in a particular security before

⁶ These updated quotes will not be directed solely to the floor broker. Anyone at the post may respond to the updated quotes.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

presenting the transaction to be crossed will provide specialists and market makers both sufficient notice that the cross is about to occur between the bid and offer spread and an opportunity to improve their quote. The Commission notes that floor brokers would still retain the ability to present both sides of the order at the post if the customers so desire.

The Commission believes that it is consistent with the protection of investors and the public interest and therefore 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 proposed rule change is designed to minimize possible negative effects on crossing transactions of decimal pricing, which is scheduled to begin in NNM securities on March 12, 2001. In addition, the Commission notes that the proposed rule change is being approved on a pilot basis only, through July 9, 2001. In light of these factors, the Commission finds good cause to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-CHX-00-27), as amended, is approved through July 9, 2001.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44003; File No. SR-NASD-01-10]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requiring Conversion to Decimals of Open Fractional Orders in Nasdaq Securities

February 26, 2001.

I. Introduction

On January 29, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant

¹⁰ 17 CFR 200.30-3(a)(12).

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would require all open orders priced in fractions in NASD member firms' systems on the evening before that security is to commence quoting in decimals to be converted to decimals. Notice of the proposed rule change appeared in the **Federal Register** on February 6, 2001.³ The Commission received no comments on the proposed rule change. This order grants accelerated approval of the proposed rule change.

II. Description of the Proposal

Pursuant to the Decimals Implementation Plan for the Equities and Options Markets ("Implementation Plan"), which was submitted to the Commission on July 24, 2000, the NASD is to fully convert the Nasdaq market to decimal pricing no later than April 9, 2001. Before full implementation, Nasdaq will begin a decimal pricing pilot program for 10-15 Nasdaq issues on March 12, 2001, and add a second decimal phase-in of approximately 100+ additional Nasdaq securities on March 26, 2001.

Nasdaq's proposal would adopt a mandatory conversion rule for all open orders in Nasdaq securities that are priced in fractions and reside in the internal systems of NASD member firms on the evening prior to the first day a particular security commences quoting in decimals. Under the proposal, all open orders, including those with price qualifiers such as "Do Not Reduce" ("DNR") and "Do Not Increase" ("DNI"), priced in fractions that reside in a firm's internal system on the evening before the start of decimal pricing, will be converted as follows: (1) The price of all open Buy Orders (including "Good-til-Canceled" ("GTC"), "Good-til-Executed" ("GTX"), and Buy Stop and Buy Stop Limits) priced in fractions will be converted to their decimal equivalent and "rounded down" to the nearest \$0.01; and (2) the price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) priced in fractions will be converted to their decimal equivalent and "rounded up" to the nearest \$0.01. Examples of fractional buy and sell conversions were provided in the notice for SR-NASD-01-10.⁴

Under the proposal, market participants would be free to accept

decimal-priced orders for any number of values beyond the decimal point as they deem appropriate after the conversion to decimals. Nasdaq will continue to require that firms round orders to two decimal places before submitting them to Nasdaq for display in the quote montage. Likewise, the Automated Confirmation Transaction Service ("ACT") will only accept trade reports up to six places beyond the decimal point and disseminate decimal priced transaction reports to four decimal points to the tape.

III. Discussion

The Commission has reviewed carefully the proposed rule change, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder.⁵ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6)⁶ of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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. The Commission believes that uniform open fractional order conversion methodology may aid in structuring an orderly transition from fractional to decimal pricing. The Commission finds that Nasdaq's proposal is narrowly tailored to require only the conversion of open fractional orders that reside in the internal systems of NASD member firms on the evening prior to the first day a particular security commences quoting in decimals. After the conversion, market participants will be free to accept orders priced in decimals for any number of values beyond the decimal point. The Commission believes Nasdaq's approach is reasonable, and that requiring such conversion may help to reduce investor confusion, reduce discrepancies in reconciliation, and in general, provide for a more orderly transition to decimal pricing.

The Commission finds good cause for approving the proposed rule change prior to the 30th date after the date of publication of notice of the filing in the **Federal Register**. Notice of the proposal indicated that the Commission would consider granting accelerated approval of the proposed rule change after a 15-

day comment period.⁷ The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's resolve to begin decimal pricing in certain Nasdaq securities on March 12, 2001, the Commission finds good cause to approve the proposal on an accelerated basis to ensure adequate notice of the rule in advance of March 12, 2001.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 15A(b)(6),⁸ in particular.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-01-10), be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43998; File No. SR-NASD-01-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Rule 10301 of the Code of Arbitration Procedure To Prohibit Terminated, Suspended, Barred or Otherwise Defunct Firms From Enforcing Predispute Arbitration Agreements in the NASD Arbitration Forum

February 23, 2001.

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 January 25, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and

⁷ See Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

⁸ 15 U.S.C. 78o-3(b)(6)

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

⁴ Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).