

secondary offerings to zero seconds (plus system processing time).⁹

Nasdaq has now determined that it is technically feasible to reduce the interval delay to zero seconds (plus system processing time) for all transactions on SuperSOES. This would mean that a market maker would be available for executions as quickly as the system can transmit instructions between the execution and quote-update engines, an operation that generally requires from one to one and a half seconds. Nasdaq market participants have indicated to Nasdaq that they would support elimination of the interval delay for all transactions on SuperSOES because this would further minimize the risk of queuing within the system. Accordingly, the proposed rule change would provide that market makers will be required to execute orders against their displayed quotes whenever the SuperSOES system delivers such orders.

Decrementation of Market Makers' Quotations. The rules governing the NNMS currently provide that an NNMS market maker's displayed quotation will be decremented upon the execution of an NNMS order in an amount equal to or greater than a round lot, and that in the event of the execution of an NNMS order for a mixed lot (*i.e.*, an order that is for more than a round lot but not a multiple thereof), the displayed quotation size will be decremented only by the number of shares represented by the number of round lots contained in the mixed-lot order.

The proposed rule change would establish a mechanism for decrementing the displayed quotation size to take account of odd-lot orders and the portion of mixed-lot orders that is not covered by the current rule. Nasdaq has determined that it is technically feasible for SuperSOES to track the number of shares executed against a displayed quotation as the result of: (i) Orders in an amount less than a round lot, and (ii) the portion of an order for a mixed lot that is in excess of the number of shares represented by the number of round lots contained in the mixed-lot order. When the total quantity of such shares equals a round lot, the size of the displayed quotation would then be decremented accordingly. Nasdaq market participants have indicated that they would support this change because it will guard against the possibility that a market participant could execute multiple odd-lot orders against a market maker's quote without

the size of the displayed quotation being decremented.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)¹⁰ of the Act, in that the proposed rule change is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

Nasdaq believes that eliminating the interval delay between executions on the NNMS will ensure that customer orders are processed in the most expeditious manner possible. Similarly, providing a mechanism for decrementing market makers' displayed quotations for all orders executed against such quotations will allow the NNMS to provide more up-to-date information about the size of displayed quotations. In turn, these improvements in order processing and display will improve market function and aid in the crucial price discovery process.

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.

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 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 proposed rule change, as amended, 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 File No. SR-NASD-2001-35 and should be submitted by June 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44363; File No. SR-NASD-2001-32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Level 1 Market Data Fees

May 29, 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 May 4, 2001, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II

⁹ See Securities Exchange Act Release No. 44142 (April 2, 2001), 66 FR 18331 (April 6, 2001) (order approving File No. SR-NASD-01-03.)

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 17 CFR 200.30-30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below, which Items have been prepared by Nasdaq.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. 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

Nasdaq filed a proposed rule change to amend NASD Rule 7010 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"). Under the proposal, Nasdaq will retroactively establish as permanent the fees currently assessed for Level 1 market data delivered to non-professional users on a monthly or per query basis.⁴ Nasdaq will make the proposed rule change effective immediately upon approval.

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 III 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 states that it has consistently supported the broadest, most effective dissemination of market information to public investors. Towards that end, in April of 1999, Nasdaq implemented a one-year pilot program that reduced by 50% the user fees for Level 1 market data delivered to non-professional users on a monthly basis (from \$4 to \$2), and also for Level 1 market data delivered to

non-professional users on a per query basis (from \$.01 to \$.005).⁵

In April of 2000, Nasdaq further reduced by 50% the user fees for Level 1 market data delivered to non-professional users on a monthly basis, but maintained the current fees for Level 1 market data delivered to non-professional users on a per query basis. Under the current pilot, the non-professional per user fee was reduced from \$2 to \$1 per month (equating to a 75% reduction in fees in two years), and the per query fee was maintained at \$.005 per query.

Nasdaq believes that reducing market data fees helps meet the demand for realtime market data by non-professional market participants. In addition, Nasdaq believes that reduced Nasdaq rates lessen the costs to NASD member firms of supplying real-time market data to their customers through automated means and encourages current delayed-data vendors to offer increased access to real-time Level 1 data to their subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)⁶ of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

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.

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

Nasdaq has neither solicited nor received written comments on the proposed rule change.

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. 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-2001-32 and should be submitted by June 26, 2001.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act⁷ and the rules and regulations thereunder applicable to a national securities association. Specifically, the proposed rule change is consistent with Section 15A(b)(5)⁸ in that the proposal should provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. In addition, the proposed rule change may further the national market system's goal in Section 11A(a)(1)(C)(iii) of assuring the availability to investors of market information.⁹

Technological developments over the last few years have allowed vendors to provide their customers with more efficient and cost effective methods of executing securities transactions. The Commission expects that reduced market data fees will further benefit the investor by reducing the costs of executing transactions. For the investor to make sound financial decisions, efficient and inexpensive access to real-time market data information is vital. Thus, the Commission believes that a retroactive application of a permanent reduction in the non-professional market data fees should enhance investor access, and may encourage increased investor participation in the securities markets.

Pursuant to section 19(b)(2),¹⁰ the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁰ 15 U.S.C. 78s(b)(2).

³ The current proposal replaces File No. SR-NASD-2001-24, which Nasdaq filed on March 30, 2001, and withdrew on April 23, 2001. See letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission dated April 20, 2001.

⁴ The pilot program expired on April 2, 2001. See Securities Exchange Act Release No. 42715 (April 24, 2000), 65 FR 52460 (May 1, 2000). In the current proposal, Nasdaq requests that the permanent adoption of the current pilot fees be made retroactive to the expiration of the pilot.

⁵ See Securities Exchange Act Release No. 41499 (June 9, 1999), 64 FR 32910 (June 19, 1999).

⁶ 15 U.S.C. 78o-3(b)(5).

of publication of notice of the filing in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow Nasdaq to expeditiously implement the permanent reduction in market data fees, on a retroactive basis, without any unnecessary delay and should confer a benefit upon those firms that provide real-time data to their customers and subscribers. The Commission also notes that it did not receive any comments on the pilot program. Accordingly, the Commission does not believe that the current filing raises any regulatory issues not raised by the previous filing.

It is therefore ordered, pursuant to Section 19(b)(2)¹¹ of the Act, that the proposed rule change, as amended, (SR-NASD-2001-32) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44352; File No. SR-NYSE-2001-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules To Provide for the Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis

May 25, 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 April 25, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes is described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 22, 2001, the NYSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend the following NYSE rules and policies to accommodate the trading of certain exchange-traded funds ("ETFs") on an unlisted trading privileges ("UTP") basis: NYSE Rule 98, NYSE Rule 36, paragraph (1) of the Guidelines to NYSE Rule 105, NYSE Rule 111, NYSE Rule 13, NYSE Rules 104.20 and 104.21, and the NYSE's Market-On-Close/Limit-At-The-Close and Pre-Opening Price Indications Policies.

The text of the proposed rule change is available upon request from the Office of the Secretary, the NYSE 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 place specified in Item IV below. The Exchange 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

As part of its overall business strategy, the Exchange believes that it appropriate to trade ETFs on the NYSE Floor. In December 2000, the Exchange began trading an ETF on the S&P Global 100 (symbol IOO).⁴ The Exchange intends to trade additional ETFs listed by other ETF sponsors, on a UTP basis, that are currently listed and trading on other markets. These ETFs may include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the Dow Industries DIAMONDS (symbol DIA). It should be noted the UTP ETFs will trade at a post separate from any other type of security trading on the Exchange.

⁴ See Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000).

Summary of Proposed Rule and Policy Changes

NYSE Rule 98

Exchange Rule 98 provides that affiliates of a specialist organization can receive an exemption from certain rules applicable to specialists (principally impacting proprietary trading and investment banking), providing that they establish a system of information barriers between themselves and the affiliated specialist. One of the conditions for the NYSE Rule 98 exemption is that the specialist organization be capitalized separately and apart from any affiliate. The Exchange is proposing to delete this requirement in the case of a specialist organization that is registered solely in ETFs. The Exchange believes that the question of adequacy of capital can be appropriately addressed by the special allocation committee⁵ in allocating the ETF. However, a specialist organization that is registered only in ETF's will remain subject to the minimum capital requirements specified in NYSE Rule 104.20.

NYSE Rule 105

Currently, Guideline (1) to NYSE Rule 105 prohibits affiliates of specialist units from acting as a primary market maker in the option on a specialty security. The NYSE proposes to permit an affiliate of a NYSE ETF specialist to act in any market making capacity with respect to options on an ETF as long as NYSE rule 98 information barriers are established.⁶ The Exchange believes that, because ETFs are derivatively priced, the conflicts of interest with respect to market making in both the underlying security and its corresponding option are not present. The Exchange also proposes to permit an affiliate of the EFT specialist to act in a market making capacity (but not as a specialist) in the EFT itself on another market center so long as NYSE Rule 98 information barriers are established.

NYSE Rules 36.30 and 111

NYSE Rule 36.30 governs the establishment of telephone or electronic communications between the Exchange's trading floor and any other location.⁷ The Exchange proposes to

⁵ See Securities Exchange Act Release No. 44272 (May 5, 2001).

⁶ As discussed above, the NYSE has proposed to eliminate the separate capital requirement with respect to ETF specialists. See also Securities Exchange Act Release No. 44175 (April 11, 2001), 66 FR 19825 (April 17, 2001).

⁷ Currently, NYSE Rule 36.30 allows specialists to have telephone lines to the floor of an options or futures exchange for the purpose of entering hedging orders.

¹¹ *Id.*

¹² 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 James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director Division of Market Regulation, Commission, dated May 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the NYSE amended the proposed rule text to reflect the correct wording of current NYSE Rule 36,