UTP exchanges that choose this option would be accessible by telephone as contemplated in the OTC/UTP Plan, or via a mutually agreed-upon alternative bilateral link negotiated by the UTP exchange. Nasdaq states that it welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that the proposal is designed to facilitate 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. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of nonautomatic execution UTP exchanges is necessary for the fair and orderly operation of the Nasdaq Stock Market because it helps reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible through SuperSOES and is alone at the best bid or best offer.

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

The NASD 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

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 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 the 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–2001–77 and should be submitted by December 6, 2001.

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

The Commission finds that the proposal, as amended, is consistent with Section 15A of the Act, and in particular with paragraph (b)(6), which requires that the rules of a national securities asssociated be 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.[10] The proposal will permit SuperSOES to continue providing executions to investor's orders when a UTP exchange is alone at the inside with a quote that cannot be reached through SuperSOES.

Nasdaq has requested that the Commission grant accelerated approval of the proposed rule change because it believes that the potential for shut down in its automatic execution systems is a serious, imminent concern. Up to four additional national securities exchanges plan to begin trading Nasdaq listed securities in the near future.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change, as amended prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. With several UTP exchanges planning to trade Nasdaq securities, the potential for queuing in SuperSOES when a non-automatic execution UTP exchange is alone at the inside will increase.[12]

V. Conclusion

It Is Therefore Ordered pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2001–77) and Amendment No. 1 thereto, are hereby granted accelerated approval, through February 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[9] The OTC/UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the OTC/UTP Plan states, in pertinent part, that Plan participants ''shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations.'' *See* Section IX, Market Access, OTC/UTP Plan. This currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the OTC/UTP Plan.

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

[11] 15 U.S.C. 78s(b)(2).

[12] For exchanges that participate in SuperSOES, this is not an issue.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45023; File No. SR–NYSE–2001–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend Rule 13 on XPress Quote Parameters

November 5, 2001.

I. Introduction

On June 13, 2001, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rule 13 on XPress quote parameters. The proposed rule change was published for public comment in the **Federal Register** on July 18, 2001.[3] The Commission received two comment letter regarding the proposed rule change.[4] The Exchange submitted a letter responding to comments on October 19, 2001.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44539 (July 11, 2001), 66 FR 37509.

[4] Letter from Ari Burnstein, Associate Counsel, Investment Company Institute (''ICI'') to Jonathan G. Katz, Secretary, Commission, dated August 7, 2001 (''ICI Letter''); Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, dated August 29, 2001 (''Peake Letter'').

[5] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated October 18, 2001 (''NYSE Letter'').

II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 13.30 to: (i) reduce the minimum size of XPress orders and quotes from 25,000 shares to 15,000 shares; and (ii) reduce the time period for designation as an XPress quote from 30 seconds to 15 seconds.

III. Comments

The Commission received two comment letters from the Investment Company Institute (''ICI'') and Junius W. Peake (''Peake'').[6] The ICI stated that the Institutional XPress system does not adequately respond to the problems faced by institutional investors trading on the NYSE. The ICI stated that the proposal to reduce the minimum XPress order and quote size and to reduce the minimum display period for XPress quote, although a small improvement, does not address the issues of inadequate protection of limit orders placed on the Exchange's limit order book and the inability of investors to interact with those orders. The ICI stated that the NYSE should eliminate the required time display for quotes to qualify as XPress, make XPress orders ineligible for price improvement, and allow XPress orders to reach through to orders on the book below the best bid and offer.

In response to the ICI Letter, the NYSE stated that the ICI's suggested changes would ''result in automatic execution of large-size orders against contra side interest that is both reflected in the current quotation, and reflected as away from the market limit orders on the limit order book that have never been exposed to the auction market.'' [7] The Exchange stated that these modifications would redefine the Exchange's agency auction market structure and would disrupt its auction market price discovery mechanism. The Exchange also stated that requiring XPress orders to be exposed to the market for price improvement opportunities is essential ''because it affords the opportunity for the most advantageous price to the XPress order, and it allows other market participants, who may * * * not wish to show their interest in the displayed quotation, to interact with the XPress order at the improved price.'' Finally, the Exchange stated that the ICI's proposal to allow XPress orders to penetrate the limit order book would ''distort the auction market pricing mechanism'' and ''would result in executions at prices away from the current market, with no opportunity for other market participants to interact with XPress orders at the away from the market prices unless they expose their interest on the limit order book.''

Peake supported the ICI's position, but stated that the ICI ''did not go far enough in criticizing the NYSE's system.'' In addition, Peake stated, among other things, that ''[t]he NYSE's system continues to favor its specialists by giving them time to react to bids and offers sent to them before requiring execution.'' Peake also stated that ''[m]any institutional investors are reluctant to expose their orders to the Floor, since it provides a golden opportunity for those with advance information to front run investors' orders, either for themselves or for their favored customers.''

In response to the Peake Letter, the NYSE stated that the NYSE's market structure does not favor specialists by allowing them to react to bids and offers before executing them. According to the Exchange, the specialist ''must expose all agency orders to the auction, represent them in accordance with the principles of agency law, and may not trade for his or her own account at prices at which he or she holds an executable agency order.'' In addition, the Exchange stated that the XPress system addresses the issue of front running by ''freezing the contra side of the market from further auction trading once the XPress order is announced.''

IV. Discussion

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. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act [8] which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, 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.[9] The Commission also finds that the proposed rule change is consistent with section 11A(a)(1)(C)(i) of the Act [10] which 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 economically efficient execution of securities transactions.

The Commission believes that by reducing the required number of shares for XPress orders and quotes and the minimum display requirement for XPress quotes, the proposed rule change should result in more orders and quotes being XPress eligible, which should help to assure the economically efficient execution of securities transactions and remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Commission believes that the 15 second display requirement should continue to provide brokers and non-XPress orders the opportunity to interact with the quote before it becomes XPress eligible.

The Commission finds that the Exchange has addressed the most significant concerns raised by commenters.[11] The Commission believes that the proposed parameters of the XPress system are appropriate and within the Exchange's business discretion. Moreover, the Commission believes that it is appropriate for the Exchange to attempt to balance the needs of institutional investors with the Exchange's desire to preserve its agency auction market structure.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2001–14) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[6] *See supra* note 4.

[7] *See* NYSE Letter, *supra* note 5.

[8] 15 U.S.C. 78f(b)(5).

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

[10] 15 U.S.C. 78k–1(a)(1)(C)(i).

[11] *See supra* section III.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).