

conversions as soon as possible. Nasdaq believes that charging a higher price to non-members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCL connections increases. Since the x.25 CTCL network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. The fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to "sunset" the x.25 CTCL network on March 31, 2002 (or sooner, if all x.25 CTCL subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁸ which requires that the rules of the NASD 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 NASD 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 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

Nasdaq has either solicited nor received written comments on 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 Nasdaq. All submissions should refer to file number SR-NASD 2001-88 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45273; File No. SR-NASD-2001-92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program

January 14, 2002.

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 December 17, 2001, the National Association of Securities Dealers, Inc. ("NASD" or

"Association"), through its 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) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ 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

Nasdaq proposes to amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program ("Program") for an additional six months, through June 28, 2002, for Tape A and B reports. No other substantive changes are proposed to the Program at this time. The text of the proposed rule change is available at the Association and at 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, 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

Nasdaq proposes to extend the Program⁵ for an additional six months, through June 28, 2002, to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 17 CFR 200.30-(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange ("NYSE") and the American Stock Exchange ("Amex").⁶ The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The Association collects trade reports from broker-dealers trading these securities in the over-the-counter ("OTC") market and provides the trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities ("Tape A") and in Amex-listed securities ("Tape B").

The Program began in 1999.⁷ Under the Program, the NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete with other exchanges (particularly the CSE and the CHX) that offer similar programs⁸ and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A), the

other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average an appropriate daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.⁹ These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The current Program expired December 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the current Program for an additional six months, through June 28, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁰ in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act¹¹ in that it 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 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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the 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 furtherance of the purposes of the Act.

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 Association. All submissions should refer to file number SR-NASD-2001-92 and should be submitted by February 8, 2002.

⁶ Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000) 65 FR 37445 (June 14, 2000) (SR-NASD-00-32).

⁷ See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR-NASD-19-13). The SEC issued notice of subsequent extensions of the Program. See Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR-NASD-99-59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR-NASD-00-10); 42907 (June 7, 2000), 65 FR 37455 (June 14, 2000) (SR-NASD-00-32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR-NASD-00-72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR-NASD-2001-15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR-NASD-2001-42); and 44734A (August 30, 2001), 66 FR 46853 (September 7, 2001) (correction).

⁸ See Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR-CHX-97-01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR-CSE-97-12).

⁹ As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and completing for order flow. See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR-NASD-99-13). Nasdaq continues to believe that such threshold numbers represent clear examples of a member's commitment to operating in the InterMarket.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45275; File No. SR-NYSE-2002-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through March 11, 2002

January 14, 2002.

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 7, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. On January 14, 2002, 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.

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

The Exchange proposes to extend, until March 11, 2002, the effectiveness of the amendments to sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.⁴ The Pilot was

subsequently amended and extended on March 30, 2001⁵ and was again extended on September 28, 2001.⁶

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 an 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 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.⁷ Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.⁸ On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.⁹ The Exchange's 2001 Extension Request became effective on September 28, 2001, on a

File No. SR-NYSE-98-32) ("Original Pilot Approval Order").

⁵ Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR-NYSE-00-32).

⁶ Securities Exchange Act Release No. 44886, 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-37) ("2001 Extension Request").

⁷ Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR-NYSE-00-32) ("2000 Extension Request").

⁸ See Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-04).

⁹ See note 5 *supra*.

pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.¹⁰ One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request.¹¹

The Exchange proposes to further extend the effectiveness of the Pilot until March 11, 2002 to provide additional time to evaluate the issues presented by the Pilot, in the light of recently adopted requirements relating to disclosure of equity compensation plan information.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,¹³ which requires, among other things, than an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

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

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

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

¹⁰ See note 6 *supra*.

¹¹ See letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors ("CII") to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. See *infra* note 12 below.

¹² Release Nos. 33-8048 and 34-45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 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 Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE proposed to change the requested extension period for its pilot regarding shareholder approval of stock option plans from April 30, 2002, as originally proposed, to March 11, 2002. Accordingly, as amended, the NYSE's pilot would expire on March 11, 2002.

⁴ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to