

\$0.50 or two times the allowable spread in regular market conditions (three times the allowable spread in "fast market" conditions).

As the ISE has noted, ISE Rule 720 does not directly consider the price at which the particular options series is trading in determining whether there has been an obvious error (although the allowable spread does increase as an option's price increases). The ISE represents that in administering the Rule, it has found that (1) the price of an option is a significant factor in determining when there is an obvious error; and (2) a pricing error in an options series trading at less than \$3.00 can often be significant even if it does not meet the current \$0.50 minimum requirement. The Commission believes that it is reasonable for the ISE, based upon its experience in administering the Rule, to amend the Rule to state that the standard for determining the existence of an obvious error for options series trading at less than \$3.00 be whether the difference between the execution price and the theoretical price is at least \$0.25.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-ISE-2001-34) be, and it hereby is, approved.

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. 34-46114; File No. SR-NASD-2002-45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Establishing Listing Standards and Listing Fees for Portfolio Depository Receipts and Index Fund Shares

June 25, 2002.

On April 3, 2002, 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"), 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 to establish listing standards and listing fees for Portfolio Depository Receipts ("PDRs") and Index Fund Shares ("Fund Shares"). On May 6, 2002, Nasdaq filed Amendment No. 1 to the proposal.³ On May 13, 2002, Nasdaq filed Amendment No. 2 to the proposal.⁴ On May 20, 2002, the Commission published the proposed rule change for comment in the **Federal Register** and granted partial accelerated approval to the portion of the proposal relating to listing standards for PDRs and Fund Shares.⁵ In this same release, the Commission published for notice and comment, but did not accelerate approval of, the portion of the proposal that dealt with Nasdaq's proposed new listing fees. The Commission is now approving Nasdaq's proposed new listing fees.

The Commission finds that this proposed rule change, as amended, is consistent with the requirements of section 15A of the Act⁶ and the rules and regulations thereunder. Specifically, the Commission finds that this proposed rule change, as amended, is consistent with section 15(A)(b)(6),⁷ which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and 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. The Commission further believes that this proposed rule change, as amended, is consistent with the provisions of section 15A(b)(5) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are less than the current fees for traditional domestic and foreign equity issues listed on The Nasdaq National Market, as the regulatory and client services costs associated with PDRs and Fund shares are lower than those for traditional equity issues. Furthermore, Nasdaq represents that the proposed listing fees for PDRs and Fund Shares are designed to cover costs and allow Nasdaq to compete for the listing of these securities with national securities exchanges.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the portion of the proposed rule change (SR-NASD-2002-45) relating to the proposed listing fees, as amended, 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. 34-46112; File No. SR-NASD-2002-83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁸ 15 U.S.C. 78o-3(b)(5).

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.

³ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq did the following: (1) Made corrections to its proposed rule text and proposal; (2) added discussion and stated its statutory basis for the proposed listing fees; (3) clarified that its regular trading hours for PDRs and Fund Shares will be from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., as designated by Nasdaq; and (4) requested accelerated approval for the portion of the proposal relating to the listing and trading standards for PDRs and Fund Shares, and not for the portion on the proposed listing fees.

⁴ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 13, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed the term "member organization" throughout its proposed rule text and proposal.

⁵ See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605. Nasdaq requested accelerated approval of all portions of the proposal except those that deal with its proposed new listing fees.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).