

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 number SR-NASD-2002-118 should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46534; File No. SR-NASD-2002-86]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish and Set a Fee for a New Data Feed for the Nasdaq InterMarket

September 23, 2002.

On June 27, 2002, 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 to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make available a new data feed of market participant quotations from the Nasdaq InterMarket, Nasdaq's facility for over-the-counter trading of exchange-listed securities, and set a fee for purchase of that data feed. The proposed rule change was published for notice and comment in the **Federal Register** on August 20, 2002.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association<sup>4</sup> and, in particular, the requirements of section 15A(b)(5)<sup>5</sup> of

the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. The Commission believes it is important that Nasdaq provide real-time market participant quotations, and believes that the iM Quotes data feed should provide broker-dealers and market data vendors with access to real-time InterMarket participant quotations to that effect. Additionally, the Commission believes that the fees Nasdaq will charge for the data feed are reasonable.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>6</sup>, that the proposed rule change (SR-NASD-2002-86) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46527; File No. SR-NYSE-2002-37]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Automatic Execution Facility (NYSE Direct+)

September 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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

The proposed rule change consists of amendments to Exchange Rules governing NYSE Direct+® ("Direct+"). The rule amendments propose to: (i) Amend Rule 13 to provide for a one-year pilot program to expand Direct+

order size eligibility for Investment Company Units, including Exchange-Traded Funds ("ETFs"), and Trust Issued Receipts, such as Holding Company Depositary Receipts ("HOLDRs");<sup>3</sup> (ii) amend Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend Rule 1005 to reflect that the rule applies to ETFs and HOLDRs. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

Rule 13: Definitions of Orders

\* \* \* \* \*

#### Auto Ex Order

An auto ex order is a limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000-1005.

*Pursuant to a one-year pilot program, orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200) may be entered as limit orders in an amount greater than 1099 shares. The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one week advance notice to the Exchange's membership.*

\* \* \* \* \*

#### NYSE DIRECT+™: RULES GOVERNING AUTOMATIC EXECUTION OF LIMIT ORDERS OF A SPECIFIED SIZE

Rules 1000-1001: No change.

#### Rule 1002: Availability of Automatic Execution Feature

Orders designated as "auto ex" in a particular stock, *Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200)* shall be eligible to receive an automatic execution if entered after the Exchange

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 46350 (August 14, 2002), 67 FR 54003.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The proposal applies to the broader categories of Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), among which ETFs and HOLDRs are a part. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Terri Evans, Assistant Director, Sonia Patton, Special Counsel, and Steve Williams, Economist, Division of Market Regulation, Commission, September 18, 2002.