

message to the quoting member, who will be obligated by rule to respond instantaneously to the order message. Moreover, the quoting member must have a demonstrated capability to respond instantaneously to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,<sup>9</sup> the member will reject the inbound order and send it back to the CSE System. The CSE System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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. Further, the Exchange believes that the proposal, as amended, is consistent with Section 6(b)(8) of the Act<sup>12</sup> in that it is not designed to impose any burden on competition not necessary or appropriate in furtherance of the Act.

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

The Exchange does not believe that the proposed rule change, as amended by Amendment Nos. 1 and 2, 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, including Amendment Nos. 1 and 2.

### **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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are 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 Exchange. All submissions should refer to File No. SR-CSE-2002-04 and should be submitted by November 1, 2002.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-26023 Filed 10-10-02; 8:45 am]

**BILLING CODE 8010-01-P**

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

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46594; File No. SR-NASD-2002-109]

### **Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's InterMarket**

October 3, 2002.

On August 8, 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: (i) Modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"); and (ii) establish a credit for the liquidity provider for executions via ITS and CAES.<sup>3</sup> The proposed rule change was published in the **Federal Register** on September 3, 2002.<sup>4</sup> The Commission received no comments on the proposed rule change. 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>5</sup> Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act,<sup>6</sup> which requires that the rules of the association 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, and Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the rules of an association promote just and equitable

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

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

<sup>3</sup> On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed a similar proposed rule change that was effective upon filing pursuant to Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). See Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR-NASD-2002-68). The proposal was summarily abrogated by Commission order on July 2, 2002. See Securities Exchange Act Release No. 46159, 67 FR 45775 (July 10, 2002).

<sup>4</sup> See Securities Exchange Act Release No. 46419 (August 27, 2002), 67 FR 56333.

<sup>5</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 17 CFR 240.11Ac1-1.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(8).

principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Commission believes that the proposed fee structure, which is similar to the fee structures in place for Nasdaq's SuperSOES and SuperMontage systems,<sup>8</sup> may encourage members to provide additional liquidity to support executions through Nasdaq's InterMarket and thereby enhance its competitiveness.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2002-109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-26026 Filed 10-10-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46620; File No. SR-NYSE-2002-46]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 8, 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 October 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. 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

On August 16, 2002, the NYSE filed with the Commission amendments to its

Listed Company Manual to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices ("SR-NYSE-2002-33" or the "Corporate Governance Proposals").<sup>3</sup> The Exchange represents that this filing excerpts certain proposed rule changes from the Corporate Governance Proposals relating to shareholder approval of equity-compensation plans and the voting of proxies, in compliance with a request from the Commission staff to address these issues separately from the remainder of the Corporate Governance Proposals.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and is also incorporated into the language of Item II, Section A below.

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

###### 1. Purpose

The NYSE states that it has long pioneered advances in corporate governance. The NYSE represents that it has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of our capital markets has demanded enhanced governance standards or disclosure. On February 13, 2002, SEC Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee (the "Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability,

integrity and transparency of the Exchange's listed companies. On August 16, 2002, the NYSE filed the Corporate Governance Proposals with the Commission, proposing rule changes to its corporate governance standards which reflect the findings of the Committee and which are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The proposals for new corporate governance listing standards for companies listed on the Exchange are proposed to be codified in a new Section 303A of the Exchange's Listed Company Manual.<sup>4</sup>

Subsequent to the filing of the Corporate Governance Proposals, the Commission staff requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and proposed NYSE Rule 452 (which prohibits member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from its remaining proposals to expedite review and processing of these portions of the Corporate Governance Proposals. The proposed rule change filed herewith amends proposed Section 303A(8) as originally filed to clarify its meaning in several respects,<sup>5</sup> and also proposes to make conforming changes to current Sections 303.00 and 312.03 of the Listed Company Manual and NYSE Rule 452.

As amended, rule language of proposed Section 303A(8) of the Exchange's Listed Company Manual is as follows:

<sup>4</sup> In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The NYSE is adopting the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used will state a basic principle, with the additional explanation and clarifications included as "commentary."

While many of the requirements set forth in this new rule are relatively specific, the Exchange is articulating a philosophy and approach to corporate governance that companies are expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards are expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

<sup>5</sup> Section 303A(11) of the Corporate Governance Proposals clarifies that the NYSE will continue its practice of accommodating the home country practices of our listed foreign private issuers with respect to the proposed corporate governance standards. In light thereof, the NYSE will not require foreign private issuers to comply with Section 303A(8) as proposed herein, assuming that they have provided to the Exchange the home country practice certification referred to in Section 303.00 of the Listed Company Manual.

<sup>8</sup> See Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR-NASD-2001-67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR-NASD-2002-44).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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 File No. SR-NYSE-2002-33 (August 16, 2002).