

the likelihood that they will be promptly executed.

#### *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*

Written comments were neither solicited nor received.

### **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 NASD 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**

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.<sup>12</sup> In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on this proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

<sup>12</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 NASD. All submissions should refer to file number SR-NASD-2002-149 and should be submitted by November 19, 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. 34-46713; File No. SR-NYSE-2002-48]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot With Respect to Exceptions to NYSE Rule 123(e) for Orders in Exchange-Traded Funds**

October 23, 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 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change

pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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**

This proposal is to extend until January 5, 2004 the effectiveness of the amendment to NYSE Rule 123(e) which provides that orders in Exchange-Traded Funds ("ETFs") may be entered into an electronic system on the Floor (Front-End Systemic Capture or "FESC") within 90 seconds of execution. This amendment was approved by the Commission on a pilot basis for one year (the "Pilot") on January 7, 2002.

#### **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

On December 21, 2001, the Exchange filed a proposed rule change to amend NYSE Rule 123(e) to provide that orders in ETFs may be entered within 90 seconds of execution.<sup>6</sup> NYSE Rule 123(e) ordinarily requires that all orders in any security traded on the Exchange be entered into an electronic data base before they can be represented in the Exchange's auction market. This exception to NYSE Rule 123(e) for ETFs was filed as a one-year pilot, and

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NYSE asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See SR-NYSE-2001-52 (December 21, 2001).

<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.

approved by the Commission on January 7, 2002.<sup>7</sup>

The Exchange proposes to extend this pilot for an additional year (from January 6, 2003 until January 5, 2004). The Exchange continues to believe that this proposal will facilitate trading in ETFs on the Exchange, while still ensuring that the Exchange maintains its electronic order data base with orders being entered in reasonable proximity to order executions. The Exchange notes that requirements that members record the time of receipt of an order on the Floor remain in full effect and are not affected by this proposal.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>8</sup> that an exchange 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. The proposed rule change is designed to accomplish these needs by strengthening the Exchange's ability to surveil the Floor activities of members.

### *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.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission) and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii).<sup>11</sup> The Commission notes, however, that waiver of these periods is not necessary to continue the Pilot uninterrupted without inconvenience and delay to the public.<sup>12</sup> The Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement (given that the Exchange filed the proposed rule on October 8, 2002), but the Commission is not waiving the 30-day operative period because it is not necessary. The proposed rule change will enable members to execute orders in ETFs quickly without having to enter the order into an electronic system (FESC). However, the proposal will still require that these orders be entered into an electronic system (FESC) within a very short time frame (90 seconds after the execution of the respective order).

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.<sup>13</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> Telephone conference between Jeffrey Rosenstock, Senior Special Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2002.

<sup>13</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). The Commission notes, however, this proposed rule change has been filed as a one-year extension of a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit data to the Commission for the purpose of evaluating the Rule's efficacy.

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 NYSE. All submissions should refer to file number SR-NYSE-2002-48 and should be submitted by November 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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## DEPARTMENT OF STATE

### [Public Notice 4180]

### **Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Jemaah Islamiya (JI)**

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Jemaah Islamiya has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render

<sup>7</sup> See Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).