

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47077; File No. SR-NASD-2002-115]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding an Amendment to Nasdaq's Transaction Credit Program for Exchange-Listed Securities to Allocate Credits to Liquidity Providers

December 20, 2002.

On August 19, 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 modify Nasdaq's transaction credit program for exchange-listed securities<sup>3</sup> to allocate credits to liquidity providers. The proposed rule change was published for notice and comment in the **Federal Register** on November 19, 2002.<sup>4</sup>

The Commission received one comment on the proposed rule change.<sup>5</sup> This order approves the proposed rule change.

As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),<sup>6</sup> the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of

market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow Nasdaq to amend its transaction credit program for exchange-listed securities to allocate credits to liquidity providers. To the extent that the Abrogation Order was prompted by evidence that entities were engaging in conduct with no economic benefit other than to capture market data fees, Nasdaq's proposal to allocate credits to liquidity providers may remove some of the incentives for engaging in such behavior.

The Commission has reviewed carefully the proposed rule change and the comment letter, and 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>7</sup> and, in particular, the requirements of Section 15A of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>9</sup> which requires the rules of a national securities association to 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.

The decision to allow Nasdaq to make these adjustments to its transaction credit program for exchange-listed securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NASD-2002-115) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</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>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47080; File No. SR-NASD-2002-134]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Exemptions From Options Position and Exercise Limits

December 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 1, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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

NASD is proposing to amend Rule 2860(b)(3)(A) of the Conduct Rules of NASD, relating to options position and exercise limits for positions entered into under certain enumerated hedge strategies.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 2860. Options

- (a) No Change
- (b) Requirements
- (1) and (2) (No Change)
- (3) Position Limits<sup>3</sup>

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of [the Association] *NASD* pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-

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

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

<sup>3</sup> The Commission notes that it made typographical changes to the rule text submitted in the proposed rule change. NASD has committed to submitting an amendment reflecting those changes. Telephone conversation between Gary Goldsholle, Office of General Counsel, NASD and Tim Fox, Law Clerk, Division of Market Regulation ("Division"), Commission on December 20, 2002.

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

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

<sup>3</sup> Nasdaq's transaction credit program for exchange-listed securities was a pilot at the time Nasdaq filed the instant proposed rule change. The program is now permanent. See Securities Exchange Act Release No. 46938 (December 3, 2002), 67 FR 72993 (December 10, 2002) (SR-NASD-2002-149) (approving proposal to make permanent Nasdaq's transaction credit pilot program for exchange-listed securities, and to increase the percentage of revenue available for distribution from 40% to 50%).

<sup>4</sup> See Securities Exchange Act Release No. 46806 (November 8, 2002), 67 FR 69780.

<sup>5</sup> See December 10, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE") to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The NYSE Letter does not specifically address the instant proposed rule change, but instead expresses the NYSE's general opposition to market data revenue sharing programs. Therefore, the Commission has not included a detailed summary of comments in this order. The NYSE Letter is available at the Commission. The Commission did not ask Nasdaq to respond to the NYSE Letter.

<sup>6</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).