

between six and twelve input and output messages. The use of the AGU reduces that number by as much as 50 percent. Based upon this reduction in system usage and the increased benefits to market participants, Nasdaq proposes to reduce the "Comparison" fee associated with AGU transactions from \$.0144 per 100 share block to \$.01 per 100 share block for trades of between 400 and 7,500 shares.<sup>5</sup> This represents a substantial savings to market participants and to investors.

*ACT Corrective Transactions Fee.* Market participants are required to correct trade reports that are inaccurate using one of five ACT functions; Cancel, Error, Inhibit, Kill, No/Was, Decline, or Break (collectively, "Corrective Transactions"). Corrective Transactions utilize the comparison functionality of ACT, in that the system is required to identify a particular trade and perform an operation that matches the conduct of the contra parties to the transaction. In fact, these transactions consume system capacity and staff resources disproportionate to those required for standard reporting transactions, and disproportionate to the fee imposed for standard comparison functions. Currently, Nasdaq assesses the standard comparison fee to such transactions.

Along with the rapid growth of Nasdaq daily trading volume, the number of Corrective Transactions is increasing rapidly, unbalancing the proper allocation of system costs to users of system functionality. Accordingly, Nasdaq proposes implementing a \$.25 fee charged to the reporting party for Cancel, Error, Inhibit, Kill, and the "No" portion of "No/Was" trades, as well as a \$.25 fee per side for Break and Decline transactions. The fee is designed to cover a portion of the costs of processing Corrective Transactions that have not previously been charged to market participants. The proposed fee would discourage the unnecessary entry of Corrective Transactions, such as the practice of canceling a number of individual trades and re-entering a single bunched trade to avoid ACT fees. Nasdaq notes that numerous self-regulatory organizations already impose comparable fees for corrective transactions, such as Nasdaq is proposing here.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the

Act,<sup>6</sup> which requires, among other things, that the Association's rules be designed to foster cooperation and coordination with persons 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. Nasdaq believes that the proposed rule change is wholly consistent with the purposes of the Act in that it will provide a cost effective and efficient mechanism to report trades, and therefore facilitates clearance and settlement. Additionally, Nasdaq believes the proposed rule change will enhance the process by which members engage in the comparison and clearing of securities transactions.

### *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.

### *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

The proposed rule change was effective upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because it establishes or changes a due, fee, or other charge imposed by the Association. 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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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-00-71 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-153 Filed 1-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43765; File No. SR-NASD-99-46]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Requiring Registration of Chief Compliance Officers

December 21, 2000.

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 September 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. NASD Regulation filed

<sup>5</sup> The AGU transaction is currently charged the ACT "Comparison" fee because it uses the ACT Comparison functionality. See footnote 4, *supra*.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.

Amendment Nos. 1<sup>3</sup> and 2<sup>4</sup> to the proposed rule change on December 11, 2000 and December 6, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 1022(a) to require chief compliance officers to register with the NASD as general securities principals. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

#### 1022. Categories of Principal Registration

##### (a) General Securities Principal

Each person associated with a member who is included within the definition of principal in Rule 1021, and each person designated as a Chief Compliance Officer on Schedule A of Form BD, shall be required to register with the Association as a General Securities Principal and shall pass an appropriate qualification examination before such registration may become effective unless [his] *such person's* activities are so limited as to qualify [him] *such person* for one or more of the limited categories of principal registration specified hereafter. A person whose activities in the investment banking or securities

business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered, pursuant to the Rule 1030 Series, either as a General Securities Representative or as a Limited Representative-Corporate Securities. *A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to [insert effective date of proposed rule change] and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulation organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the appropriate Qualification Examination. If such person has acted as a Chief Compliance Officer for a member whose business is limited to the activities described in Rule 1022(d)(1)(A) or Rule 1022(e)(2), he or she shall be exempt from the requirement to pass the appropriate Qualification Examination only if he or she registers as a Limited Principal pursuant to Rules 1022(d) or Rule 1022(e), as the case may be, and restricts his or her activities as required by such registration category. A Chief Compliance Officer who is subject to the Qualification Examination requirement shall be allowed a period of 90 calendar days following [insert effective date of proposed rule change] within which to pass the appropriate Qualification Examination for Principals.*

\* \* \* \* \*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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.

NASD Regulation 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 purpose of the proposed rule change is to require the chief compliance officer designated on Schedule A of a member's Form BD to be registered as a principal. Some chief compliance officers may already be registered as a principal due to other NASD rule requirements. For example, NASD Rule 3010(a)(8) requires each member to designate and specifically identify to the NASD one or more principals who are required to review the member's supervisory system, procedures, and inspections implemented by the member and take appropriate action reasonably designed to achieve the member's compliance with applicable securities laws and regulations. For some members, the chief compliance officer is one of these designated principals. For other members, the chief compliance officer may already be registered as a principal because he or she is an officer of the member or otherwise engaged in the member's investment banking or securities business in a manner that requires principal registration under NASD Rule 1021.

For other members, however, chief compliance officers may not be registered. Rule 1021(a), which sets forth the requirements for principal registration, states that a member "may" make or maintain an application for principal registration for certain personnel, including compliance personnel. The negative implication of this provision is that compliance personnel are not required to be registered, but that a member may choose whether to register an individual with compliance responsibilities. Some members have chosen not to register any compliance personnel.

NASD Regulation believes that the chief compliance officer of a member, as designated on Schedule A of the Form BD, should be registered as a principal. Chief compliance officers generally advise registered representatives and other principals on compliance issues and devise compliance systems and procedures for the firm as a whole. As such, a chief compliance officer should be able to demonstrate his or her knowledge through a qualifications

<sup>3</sup> See Letter dated October 28, 1999, from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 clarifies that if a person becomes a chief compliance officer for the first time after the effective date of the proposed rule change for a dual New York Stock Exchange and NASD member, that person may elect to take the New York Stock Exchange Series 14 exam, and would not be required to take NASD Series 24 exam.

<sup>4</sup> See Letter dated December 1, 2000, from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission ("Amendment No. 2"). Amendment No. 2 limits the grandfathering provision of the proposed rule change to individuals who have been designated as chief compliance officers on Schedule A of Form BD for at least two years immediately prior to the effective date of the proposed rule change and who have not been subject within the previous ten years to: (1) Any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; or (3) the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding.

examination and be subject to continuing education requirements.

Under the proposed rule change, the chief compliance officer must be registered as a Series 24 General Securities Principal, unless the member's activities are limited to particular areas of the investment banking or securities business. In that case, the individual may apply for a limited principal registration. For example, if a member sells only mutual funds, the chief compliance officer of that member may apply for registration as either a Series 26 Limited Principal—Investment Company and Variable Contracts Products or a Series 24 General Securities Principal. Acceptable limited principal categories for a chief compliance officer are the Series 4 (Registered Options Principal), 26 (Limited Principal Investment Company and Variable Contracts Products), 39 (Limited Principal Direct Participation Programs), and 73 (Government Securities Principal), if the activities of the chief compliance officer's firm are limited to these areas.

By requiring chief compliance officers to be registered, NASD Regulation is not creating a presumption that they are supervising the member's securities or investment banking business or otherwise are control persons. Some chief compliance officers are completely segregated from a member's supervisory structure. As in the past, NASD Regulation will determine whether a person is acting as a supervisor or control person by looking at the responsibilities and functions he performs for the member, not simply his title.

To avoid imposing duplicative examination requirements on dual NASD/New York Stock Exchange ("NYSE") members, NASD Regulation has determined that for purposes of chief compliance officer registration, it will accept the NYSE's Series 14 Compliance Official examination in lieu of any of the NASD principal examinations noted above. For example, if a person had passed the NYSE Series 14, and after the effective date of the rule, accepted a chief compliance officer position with an NASD member, then the person would not be required to take the Series 24 examination. In addition, if a person becomes a chief compliance officer for the first time after the effective date of the proposed rule change for a dual NASD/NYSE member, that person may elect to take just the NYSE Series 14 exam, and would not be required to take NASD Series 24 exam.<sup>5</sup>

NASD Regulation currently proposes to make the rule change effective on July 1, 2001. A person who has been designated as a chief compliance officer on Schedule A of Form BD for at least two years immediately prior to the effective date of proposed rule change and who has not been subject within the last ten years to the disciplinary procedures described in proposed Rule 1022(a) will not have to pass the appropriate qualification examination. All chief compliance officers "grandfathered" will be subject to continuing education requirements. If the chief compliance officer is registered as a Limited Principal, he or she will be exempt from the requirement to pass the appropriate qualification examination if he or she restricts his or her activities as required by such registration category. A chief compliance officer who is subject to the qualification examination requirement must pass the appropriate exam within 90 calendar days of the effective date of proposed rule change.<sup>6</sup>

If a person grandfathered under this provision wishes to serve as a principal for any other function, he must be appropriately qualified and registered. The grandfather provision applies only to the chief compliance officer function. Any person who is listed as the chief compliance officer on the Form BD for the first time on or after July 1, 2001, will be required to apply for registration, pass the required examinations, and participate in continuing education.

Finally, NASD Regulation wishes to clarify an interpretive position related to the new chief compliance officer registration requirement. In Notice to Members 99-49, NASD Regulation stated that a general counsel of a member is not required to be registered unless he sits on the member's board of directors or otherwise participates in the management of the member's securities or investment banking business.<sup>7</sup> NASD Regulation has determined that this interpretation will continue to apply

<sup>6</sup> See Amendment No. 2, *supra* note 4.

<sup>7</sup> The Notice to Members further explained that an employee of a member who sits on its board of directors is generally presumed to be involved in the day-to-day management of the member's business and therefore is required to be registered as a principal. If the general counsel or corporate secretary is not a director but has management-level responsibilities for supervising any aspect of the member's investment banking or securities business, he would have to be registered as a principal. Management responsibilities in this context would include serving as a voting member of the firm's executive, management, or operations committees. A general counsel may participate in such committees' activities without triggering a registration requirement if he only provides counsel to the committee and does not vote.

after the effective date of the rule even if a registered chief compliance officer reports directly to the general counsel (*i.e.*, the general counsel has the power to hire and fire and direct the activities of the chief compliance officer). NASD Regulation does not believe that it is necessary at this time to impose a general registration requirement on general counsels, or to require them to be registered simply because registered persons may report to them.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NASD Regulation believes that adding this registration requirement will help protect investors and the public interest by ensuring that chief compliance officers can demonstrate their knowledge about compliance matters and stay up-to-date with industry requirements through continuing education.

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

NASD Regulation does not believe that the proposed rule change, as amended, will result in 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 proposed rule change was published for comment in NASD Notice to Members 99-51. NASD Regulation received sixty-one comments in response to the Notice. Thirty-seven commenters favored registration of chief compliance officers<sup>9</sup> and 15 were

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> Letters from A.G. Edwards & Sons, Inc. ("A.G. Edwards"); American Equity Capital, Inc. ("American Equity"); Atlantic Capital Management, LLC (Atlantic); BMS International ("BMS"); Burke, Christensen & Lewis Securities, Inc. ("Burke, Christensen"); California Association of Independent Broker-Dealers ("CAIBD"); Centennial Securities Co. ("Centennial"); Consolidated Financial Investments, Inc. ("Consolidated Financial"); Corporate Network Brokerage Services, Inc. ("Corporate Network"); Melissa Crockett ("Crockett"); Davenport & Company, LLC ("Davenport"); Dreyfus Brokerage Services ("Dreyfus"); Robert A. Eder, Sr. ("Eder"); FAS Wealth Management Services, Inc. ("FAS Wealth Management"); Fulcrum Financial Advisors, Inc.

<sup>5</sup> See Amendment No. 1, *supra* note 3.

opposed.<sup>10</sup> Nine commenters did not take a specific position on requiring chief compliance officer registration.<sup>11</sup> Some of the commenters who opposed the proposed rule change stated that it is not necessary for chief compliance officers to demonstrate their knowledge through examinations because they could not obtain the position unless they were competent and/or that the expenses associated with registration would be burdensome.<sup>12</sup> One commenter stated that continuing education programs are already available to compliance personnel.<sup>13</sup> Another commenter stated that the rule would create a presumption that the chief compliance officer is a control person.<sup>14</sup>

NASD Regulation does not believe that the incremental effort required for a chief compliance officer to pass examinations to demonstrate his knowledge would be burdensome. As noted above, some chief compliance officers already are registered as principals, so no additional requirement is being imposed on them. Also, NASD Regulation does not believe that the cost associated with registering at most one more person for each member is unduly burdensome. Furthermore, required

(“Fulcrum”); H.C. Wainwright & Co., Inc. (“Wainwright”); Jackson Securities, Inc. (“Jackson”); John Hancock Mutual Life Insurance Company (“John Hancock”); Lynn Junkin (“Junkin”); Betty Kabanek; Don Katz (“Katz”); Keystone Brokerage, Inc. (“Keystone”); Andrew J. Lenza (“Lenza”); Liberty Funds Distributor, Inc. (“Liberty Funds”); Lincoln Investment Planning, Inc. (“Lincoln Investment”); Larry Lowman (“Lowman”); Mid-Florida Equities, Inc. (“Mid-Florida Equities”); MidSouth Capital Incorporated (“MidSouth Capital”); mlmcarthurlafon@dtsystems.com; MML Investors Services, Inc. (“MML”); Nalico Equity; Linda K. Parker (“Parker”); Regions Investment Company, Inc. (“Regions”); Althea Roberts (“Roberts”); SIA Self-Regulation and Supervisory Practices Committee (“SIA Committee”); Tradition, Inc. (“Tradition”); and Unified Management Corporation (“Unified Management”).

<sup>10</sup> Letters from Branch Cabell & Co., Inc. (“Branch Cabell”); Charles Schwab & Co., Inc. (“Schwab”); Mark Geregach (“Geregach”); George T. Goldman; Mark Horin (“Horin”); Knight Securities, L.P. (“Knight Securities”); Eric D. Koval (“Koval”); lizakahn@aol.com; Joel Martin McTague (“McTague”); Orrick, Herrington & Sutcliffe, LLP; Princeton Equity Securities, Inc.; St. Bernard Financial Services, Inc.; Syndicated Capital; John Tubman; and Robert Woerber (“Woerber”).

<sup>11</sup> Letters from DMA Management and Regulatory Consulting; Donald W. Gendron (“Gendron”); Investment Company Institute (“ICI”); Eileen Miotke; Bill Mullally; NBC Capital Markets Group, Inc.; Nationwide Life Insurance Company; Lisa Roth; and The Securities Center, Inc. (“TSC”). For example, some commenters stated that small firms should be exempted from the requirement of chief compliance officer registration. See Letters from Gendron and TSC.

<sup>12</sup> See Letters from Branch Cabell; Horin; Koval; Schwab; and Woerber.

<sup>13</sup> See Letter from Geregach.

<sup>14</sup> See Letter from Knight Securities.

annual continuing education programs will assist the chief compliance officer in staying current with regulatory requirements and developments. Finally, as stated above, NASD Regulation will not presume that a chief compliance officer is a supervisor or control person just by virtue of his title.

Twenty-six commenters favored using the Series 24 General Securities Principal registration category (or a limited principal category as appropriate);<sup>15</sup> four commenters were opposed.<sup>16</sup> Only nine commenters favored the creation of a new examination,<sup>17</sup> while 14 commenters opposed it.<sup>18</sup> NASD Regulation determined not to create a new examination because it believes that the Series 24 is suitable for testing knowledge of compliance matters, some chief compliance officers have already taken and passed it, and the development costs associated with a new examination would have to be passed along to members.

Nine commenters favored accepting the NYSE Series in lieu of the Series 24.<sup>19</sup> NASD Regulation agrees with these commenters and will accept the NYSE examination for purposes of chief compliance officer registration.

Most commenters did not address the issue of whether a general counsel who supervises a registered chief compliance officer should be registered. However, nine commenters specifically favored requiring such a general counsel to be registered,<sup>20</sup> while eight were opposed.<sup>21</sup> Only one of the commenters in favor of general counsel registration offered a rationale for its position,

<sup>15</sup> See Letters from A.G. Edwards; Atlantic; BMS; Consolidated Financial; Corporate Network; Crockett; Eder; FAS Wealth Management; Fulcrum; Jackson; John Hancock; Junkin; Keystone; Lenza; Liberty Funds; Lincoln Investment; Lowman; Mid-Florida Equities; MidSouth Capital; mlmcarthurlafon@dtsystems.com; MML; Parker; Regions; SIA Committee; Tradition; and Unified Management.

<sup>16</sup> See Letters from American Equity; Burke, Christensen; and CAIBD.

<sup>17</sup> See Letters from A.G. Edwards; Burke, Christensen; CAIBD; Centennial; Fulcrum; Lenza; Mid-Florida Equities; and Lisa Roth.

<sup>18</sup> See Letters from American Equity; Corporate Network; Eder; Wainwright; John Hancock; Katz; Liberty Funds; Lowman; MidSouth Capital; mlmcarthurlafon@dtsystems.com; MML; Parker; Regions; and SIA Committee.

<sup>19</sup> See Letters from A.G. Edwards; Corporate Network; Davenport; Dreyfus; H.C. Wainwright; John Hancock; Roberts; Schwab; and SIA Committee.

<sup>20</sup> See Letters from A.G. Edwards; Crockett; Davenport; Eder; Keystone; MidSouth Capital; MML; NBC Capital Markets Group, Inc.; and Tradition.

<sup>21</sup> See Letters from ICI; John Hancock; Knight Securities; Lenza; Liberty Funds; McTague; Nationwide Life Insurance Company; Syndicated Capital.

stating that a law degree does not ensure knowledge of securities laws and that a general counsel who supervises a chief compliance officer is in effect the chief compliance officer himself.<sup>22</sup> While NASD Regulation agrees with the first reason, it disagrees with the second. The fact that a chief compliance officer reports to another officer such as the general counsel does not make that officer the “effective” chief compliance officer. Commenters opposed to requiring a general counsel to register stated that a registration requirement could lead firms to restructure reporting lines, undermine the independence of the general counsel, and improperly interfere with the practice of law.<sup>23</sup> NASD Regulation does not believe that a compelling reason has been offered at this time to impose a general registration requirement on general counsels who supervise chief compliance officers.

Six commenters opposed grandfathering current chief compliance officers (*i.e.*, applying the proposed rule change prospectively only).<sup>24</sup> NASD Regulation disagrees with these commenters. As noted previously, the NASD rules to date have not explicitly required chief compliance officer registration, and it would be unnecessarily burdensome to apply the new requirement immediately to all persons currently serving in this position. Therefore, NASD Regulation determined to impose the requirement only on persons who have not acted as chief compliance officers for at least two years immediately prior to the effective date of the proposed rule change and who have not been subject within the last ten years to the disciplinary procedures described in proposed Rule 1022(a).

### 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 NASD Regulation 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.

<sup>22</sup> See Letter from Davenport.

<sup>23</sup> See Letters from ICI and Knight Securities.

<sup>24</sup> See Letters from A.G. Edwards; Crockett; Fulcrum; MidSouth Capital; Parker; and SIA Committee.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-99-46 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Johnathan G. Katz,**  
Secretary.

[FR Doc. 01-154 Filed 1-3-01; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43767; File No. SR-NYSE-00-18]

#### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval of Amendment Nos. 1 and 2, on a Pilot Basis Ending on December 21, 2001, Relating to NYSe Direct+, the Exchange's Automatic Execution Facility for Certain Limit Orders of 1099 Shares or Less

December 22, 2000.

#### I. Introduction

On May 1, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 implementing NYSe Direct+, an automatic execution facility for certain limit orders of 1099 shares or less. The proposed rule change was published for public comment in the **Federal Register** on June 15, 2000.<sup>3</sup> The Commission received one comment letter regarding the proposed rule change.<sup>4</sup> The Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change on August 21, 2000<sup>5</sup> and December 21, 2000,<sup>6</sup> respectively. This order approves the proposed rule change on a pilot basis ending on December 21, 2001 and grants accelerated approval to Amendment Nos. 1 and 2. The Commission is also soliciting comment on Amendment Nos. 1 and 2 to the proposed rule change.

#### II. Description of the Proposed Rule Change

The proposed rule change establishes a new trading platform, NYSe Direct+, for the automatic execution of certain

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

<sup>3</sup> Securities Exchange Act Release No. 42913 (June 8, 2000), 64 FR 55514.

<sup>4</sup> Letter from Craig S. Tyle, General Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz, Secretary, Commission, dated July 6, 2000 ("ICI Letter").

<sup>5</sup> Letter from Daniel Parker Odell, Assistant Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 17, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies several items relating to Rule 1000, 1004, and 1005. With respect to Rule 1000, Amendment No. 1 clarifies that orders that are not automatically executed will be entered in the auction market, and an order entered into the auction market is treated the same as any other limit order entered on the Exchange through the SuperDOT system. Amendment No. 1 also clarifies that proposed Rules 1000(ii) and (v) are, in effect, examples of proposed Rule 1000(iv) because both relate to situations where the Exchange's published bid or offer is 100 shares. The Exchange further explained that to "gap" a quotation involves setting the bid and asked prices at a spread wider than normal in a stock in order to alert market participants that a special situation exists. With respect to Rule 1004, Amendment No. 1 clarifies that executions of orders entered in NYSe Direct+ (or "auto ex orders") shall elect stop limit orders as well as stop orders and percentage orders electable at the price of such executions. With respect to Rule 1005, Amendment No. 1 clarifies the prohibition on the entry of auto ex orders within 30 seconds for the same customer applies on a per stock basis. Finally, Amendment No. 1 states that the Exchange intends to choose the stocks eligible for participation in the pilot program for NYSe Direct+ based on a number of criteria, including volume, trading characteristics and floor location.

<sup>6</sup> Letter from James E. Buck, Secretary and Senior Vice President, Exchange, to Jack Drogin, Assistant Director, Division, Commission, dated December 20, 2000 ("Amendment No. 2"). Amendment No. 2 replaces the phrase "is being completed" with "has been agreed upon" in proposed Rule 1003. Amendment No. 2 also deletes the prohibition in proposed Rule 1005 against orders larger than 1,099 shares being broken up in smaller amounts for the purpose of receiving an automatic execution.

limit orders of 1099 shares or less ("auto ex" orders) against trading interest reflected in the Exchange's published quotation. Limit orders priced at or above the Exchange's published offer price (in the case of an auto ex order to buy), and limit orders priced at or below the Exchange's published bid price (in the case of an auto ex order to sell) are eligible for automatic execution via NYSe Direct+. The contra side of the auto ex order would be the trading interest reflected in the Exchange's bid or offer, in accordance with the Exchange's auction market principles of priority and parity codified in Exchange Rule 72. Auto ex orders would receive automatic executions without being exposed to the auction market.<sup>7</sup> However, if the automatic execution feature is not available,<sup>8</sup> the auto ex order would be entered for execution in the Exchange's auction market. Auto ex transactions would be identified on the Consolidated Tape with a unique identifier, and the Exchange's published bid or offer would be automatically decremented to the extent of the size of the auto ex order to reflect the automatic execution.

It would not be mandatory that all eligible limit orders of 1099 shares be entered as auto ex orders NYSe Direct+. Member organizations (or their customers if enabled by the member organization) can choose to use NYSe Direct+ when the speed and certainty of an execution at the Exchange's published bid or offer price is in the customer's best interest. If a customer's interest would best be served by affording the customer's order the opportunity for price improvement, the member (or customer) may enter a limit or market order by means of the SuperDOT system for representation in the auction market, rather than an auto ex order.

The Exchange's proposal would be implemented in proposed Rules 1000 through 1005.<sup>9</sup> Rule 1000 species the types of orders eligible for entry as auto ex orders. In addition, the Rule lists six instances where the automatic execution feature would not be available due to, for example, particular market situations, lack of depth in the published quotation, or inappropriate

<sup>7</sup> To be exposed or entered in the Exchange's auction market means that the order would be treated like orders received from the SuperDOT system. See Amendment No. 1, *supra* note 5.

<sup>8</sup> See proposed Rule 1000.

<sup>9</sup> The Exchange file a separate proposed rule change to implement Rule 1006, which provides for the automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation. Securities Exchange Act Release No. 43110 (August 2, 2000), 65 FR 48776 (August 9, 2000).

<sup>25</sup> 17 CFR 2000.30-3(a)(12).

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