who are parties to trades that are claimed to be clearly erroneous. In addition, Nasdaq officers who are called upon to review such trades would be provided with transparent standards and procedures when determining whether a transaction is clearly erroneous.

The amendments to NASD Rule 11890 also would require a Nasdaq market participant to allege a mistake of material fact in order to appeal a determination of a Nasdaq officer that a transaction is not eligible for review and would permit the use of panels of one or more members of the MORC for the purpose of reviewing such determinations. If the MORC panel concludes that a mistake of material fact has not been alleged in an appeal, the determination shall become final and binding and Nasdaq would not be required to notify the counterparty to the trade about the appeal. The Commission notes that, if the MORC concludes that an appeal alleges a mistake of material fact, the counterparty would be notified and a determination as to whether the appeal alleges a mistake of material fact would be reviewed by the MORC panel. In the event that the panel then determines that the appeal alleges a mistake of material fact, the complaint would be remanded to the Nasdaq officer and the right of either party to appeal would be preserved. The Commission believes that these procedures, particularly the requirement that the complaint be remanded to the Nasdaq officer and the preservation of the appeal right in the event the MORC panel determines that the appeal alleges a mistake of material fact, are designed so that NASD Rule 11890 is exercised an efficient manner, while the rights of the parties to an appeals process are preserved.

Finally, the amendments to NASD Rule 11890 would eliminate the requirement for an adjudication of a complaint or an appeal if the party submitting the complaint or appeal withdraws it prior to the notification of counterparties and would provide that appeals be focused solely on trades to which the party submitting the appeal is a party. The Commission believes that these features of the amendments are designed to provide additional certainty to Nasdaq market participants that their trades would not be adjusted or nullified if they decide not to appeal a particular trade or trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–2004–009), as amended by Amendments Nos. 1, 2, 3, 4, and 5, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52148; File No. SR–NASD–2005–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Eliminating the Directed Order Process in the Nasdaq Market Center

July 28, 2005.

On April 21, 2005, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Directed Order Process in the Nasdaq Market Center. On May 2, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 16, 2005.[3] The Commission received no comments on the proposal.[4]

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 registered securities association.[5] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act [6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

Nasdaq proposes to eliminate the Directed Order Process from the Nasdaq Market Center. The Directed Order Process, which replicates the SelectNet functionality that pre-dated the implementation of the Nasdaq Market Center, operates independent of the Non-Directed Order Process. Specifically, the Directed Order Process is used by members to negotiate trades and allows orders to be executed at prices inferior to the best prices displayed in the Nasdaq Market Center. In addition, because the Directed Order Process is not integrated within the order execution algorithm for the Non-Directed Order Process, Directed Order trades are executed without consideration of the price-time priority of orders in the Non-Directed Order Process.

Because the Directed Order Process allows orders to bypass limit orders that have price priority and/or time priority, its elimination will enhance the protection of limit orders in the Nasdaq Market Center. Accordingly, the Commission believes that this proposed rule change may result in increased liquidity. In addition, the Commission notes that Nasdaq represented that it believes that it is now appropriate to retire the Directed Order Process from the Nasdaq Market Center in light of the recent elimination of Nasdaq's pre-open Trade-or-Move requirements which obligated market participants to send Directed Orders containing a Trade-or-Move message.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NASD–2005–056) be, and hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51668 (May 11, 2005), 70 FR 25869 (''Notice'').

[4] The Commission notes that Nasdaq also proposed to eliminate the Directed Order Process in File No. SR–2004–181. The Commission has received one comment letter on that proposal. *See* letter to Jonathan G. Katz, Secretary, Commission, from Mary Yeager, Assistant Secretary, New York Stock Exchange, dated January 10, 2005. The comment letter raised issues regarding Nasdaq's application to register as a national securities exchange and did not specifically address any issues relating to the elimination of the Directed Order Process. The Commission expects Nasdaq to file an amendment to File No. S–NASD–2004–181 to reflect the Commission's approval of this proposed rule change.

[5] In approving this proposal, the Commission considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4122 Filed 8–2–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52155; File No. SR–NYSE–2005–52]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

July 28, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder, notice is hereby given that on July 25, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 an extension until November 30, 2005, of the Voluntary Supplemental Procedures for Selecting Arbitrators (''Supplemental Procedures'').

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. 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 proposed rule change is intended to extend until November 30, 2005 the Supplemental Procedures, which were approved by the Commission, most recently in SR–NYSE–2005–10,[5] for a six-month period ending July 31, 2005.

The Exchange currently has several methods by which arbitrators are assigned to cases, including the traditional method under NYSE Rule 607, pursuant to which Exchange staff appoints arbitrators to cases (the ''Traditional Method''). On August 1, 2000, the Exchange implemented a two-year pilot program to allow parties, on a voluntary basis, to select arbitrators under two alternative methods (in addition to the Traditional Method).[6] Upon expiration of the two-year pilot, the Exchange renewed the pilot for an additional two years, which expired on July 31, 2004,[7] and then again for an additional six months through January 31, 2005,[8] and ultimately until July 31, 2005.[9]

Under the Supplemental Procedures, the first alternative to the Traditional Method is the Random List Selection method by which the parties are provided randomly generated lists of public-classified and securities-classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. If vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

The second alternative to the Traditional Method is entitled Enhanced List Selection, in which six public-classified and three securities-classified arbitrators are selected, based on their qualifications and expertise, by Exchange staff. The lists are then sent to the parties. The parties have a limited number of strikes to use and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Finally, the Supplemental Procedures provide that the Exchange will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement as to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the Traditional Method is used.

The Exchange, pursuant to a separate filing,[10] is proposing amendments to NYSE Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. Pending Commission approval of those amendments, the Exchange proposes to extend the pilot period for the Supplemental Procedures for an additional four months, until November 30, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 51085 (January 27, 2005), 70 FR 5716 (February 3, 2005).

[6] *See* Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–00–34).

[7] *See* Exchange Act Release No. 46372. *See also* Exchange Act Release No. 47929 (May 27, 2003), 68 FR 32791 (June 2, 2003) (SR–NYSE–2003–15).

[8] *See* Exchange Act Release No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

[9] *See* Exchange Act Release No. 51085, *supra* note 5.

[10] *See* Exchange Act Release No. 51863 (June 16, 2005) 70 FR 36451 (June 23, 2005) (SR–NYSE–2005–02).

[11] 15 U.S.C. 78f(b)(5).