

securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6) and 11A(a)(1)(C) of the Act because the proposal protects investors and the public interest by promoting better processing of price information in UITs. Nasdaq believes that the proposed listing fees will encourage the listing of UITs, thereby providing greater pricing information for a broader base of investments for which there is significant investor interest. Nasdaq also believes that the proposed listing fees will enable Nasdaq to identify, screen and list bona fide UITs with a meaningful investor base and trading interest.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq 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

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

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, and 4, 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 NASD.

All submissions should refer to File No. SR-NASD-00-82 and should be submitted by April 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45504 ; File No. SR-NASD-2002-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

March 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, 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

Nasdaq proposes to extend through April 15, 2002, the penny (\$0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM-3350"). Without such an extension this standard would terminate on March 1, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)⁵ of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,⁶ Nasdaq's proposal to establish a \$0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. Nasdaq now proposes to extend, through April 15, 2002, that pilot program. Extension until April 15th, will allow the termination date of the short sale pilot to coincide with the termination date of Nasdaq's decimal-related Manning customer limit order protection pilot and the termination date set by the Commission for all decimal-related pilot programs.⁷ If

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

⁷ Nasdaq recently filed with the Commission to obtain permanent approval of the penny short sale rule. (See SR-NASD 2002-09). Please note that Nasdaq incorrectly stated in that filing that it had

¹⁵ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least \$0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also \$0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act⁸ in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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.

Nasdaq has requested the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)¹¹ and has requested that the Commission accelerate the operative date. The Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements because the extension of the pilot is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through April 15, 2002, the deadline for which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to waive both the 5-day notice and 30-day pre-operative requirements.¹²

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 Nasdaq. All submissions should refer to file number SR-NASD-2002-30 and should be submitted by April 1, 2002.

¹¹ *Id.*

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45506; File No. SR-NASD-2002-18]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Member Transaction Fees

March 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b4 thereunder,² notice is hereby given that on February 5, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

In order to encourage NASD members to report their trades through Nasdaq, Nasdaq is proposing to charge lower transaction fees to market participants that use Nasdaq as their market of choice for trade reporting, while charging higher fees to market participants that avail themselves of Nasdaq's quotation montage or make limited use of its transaction execution systems but elect to report trades through other facilities.³ Nasdaq

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b4.

³ Nasdaq believes that this proposed rule change establishes or changes a due, fee, or other charge imposed by a self-regulatory organization and conceivably could be designated as immediately effective under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). After discussions with Commission staff, Nasdaq determined that the proposed rule change should be filed under Section 19(b)(2), 15 U.S.C. 78s(b)(2), to provide an opportunity for a more extensive comment process. If the Commission approves this filing, however, Nasdaq reserves the right to file future modifications to the pricing structure proposed

Continued

filed to extend the short sale pilot until April 15, 2002.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).