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 NASD. All submissions should refer to the File No. SR–NASD–2002–166 and in the caption above and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32318 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47008; File No. SR–NASD–2002–153]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Extend Manning Protection to Customer Limit Orders in All Securities Quoted on the Over-the-Counter Bulletin Board on a Permanent Basis

December 16, 2002.

I. Introduction

On October 25, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent NASD Rule 6541, which currently is operating on a pilot basis. NASD Rule 6541 provides Manning protection to customer limit orders in approximately 325 securities quoted on the Over-the-Counter Bulletin Board (''OTCBB''). The proposal was published for comment in the **Federal Register** on November 15, 2002.[3] The Commission received no comments on the proposal. On December 16, 2002, the NASD (through Nasdaq) filed Amendment No. 1 to the proposal.[4] This notice and order solicits comment on the proposed rule change, as revised by Amendment No. 1, and approves the amended proposal on an accelerated basis.

II. Description of Proposed Rule Change and Amendment No. 1

NASD Rule 6541 is an investor protection tool based on NASD Interpretive Material (''IM'') 2110–2 (commonly known as the ''Manning Rule''). In the original *Manning* case, the NASD found, and the Commission affirmed, that a member firm that accepts a customer limit order has a fiduciary duty to refrain from trading for its own account at a price more favorable than the customer's order.[5] NASD Rule 6541 currently extends customer limit order protection to approximately 325 securities quoted on the OTCBB on a pilot basis.[6] NASD Rule 6541(a) prohibits an NASD member that accepts a customer limit order in these securities from ''trading ahead'' of the limit order for its own account at prices equal or superior to the limit order, without first executing the limit order. NASD Rule 6541(b) permits a member to avoid the obligation in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, the price improvement must be for a minimum of the lesser of $0.01 or one-half of the current inside spread.[7]

NASD Rule 6541(c) provides that, notwithstanding the obligation in paragraph (a), a member may negotiate specific terms and conditions applicable to the acceptance of the limit orders of institutional accounts and of orders greater than 10,000 shares and $20,000 in value. NASD Rule 6541(d) provides that a member that trades through a held limit order must execute such limit order contemporaneously, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price. NASD Rule 6541(e) provides that the rule applies from 9:30 a.m. until 4 p.m. Eastern Time, and that the rule applies regardless of whether the subject security is also quoted in another quotation medium.

During the pilot period, Nasdaq's Department of Economic Research analyzed the impact of the pilot on relevant aspects of the OTCBB's operation. Nasdaq reported that the Department's study found no material impact on market quality (as measured by trading activity, market maker quoting activity, and spread behavior) for the securities subject to the pilot.

Nasdaq now seeks to establish NASD Rule 6541 on a permanent basis and to extend Manning protection to customer limit orders in all securities quoted on the OTCBB. In addition, consistent with this proposal, Nasdaq in Amendment No. 1 proposed to eliminate two existing provisions of NASD Rule 6541(e), which provide that the current pilot applies only to certain securities for a specified time period. As revised by Amendment No. 1, NASD Rule 6541 would appear as follows:

Rule 6541 Limit Order Protection

(a)–(d) No change.

(e) Application

[(1) This rule shall apply only to OTCBB securities specifically identified as such through the Nasdaq Workstation service.]

(*1*[2]) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.

(*2*[3]) This rule shall apply from 9:30 a.m. to 4 p.m. Eastern Time.

[(4) This rule shall be in effect until December 15, 2002.]

* * * * *

---

[22] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46783 (November 7, 2002), 67 FR 69279.

[4] *See* letter from Jeffrey S. Davis, Nasdaq, to Nancy J. Sanow, Division of Market Regulation, Commission, dated December 13, 2002 (''Amendment No. 1''). Amendment No. 1 would revise paragraph (e) of NASD Rule 6541 to remove: (1) A provision specifying the date of the rule's expiration; and (2) a provision limiting the rule only to OTCBB securities that are expressly identified as being subject to the rule. These provisions are no longer necessary in light of the NASD's proposal to extend limit order protection to all OTCBB securities on a permanent basis.

[5] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988) (''*Manning*'').

[6] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22). *See also* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001) (SR–NASD–2001–39) (amending the price improvement provisions of NASD Rule 6541); Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78) (further amending the price improvement provisions); Securities Exchange Act Release No. 45276 (January 14, 2002), 67 FR 2936 (January 22, 2002) (SR–NASD–2002–06) (extending pilot period for NASD Rule 6541 for an additional six months); Securities Exchange Act Release No. 46248 (July 24, 2002), 67 FR 49727 (July 31, 2002) (SR–NASD–2002–95) (extending pilot period for NASD Rule 6541 for an additional six months).

[7] For purposes of NASD Rule 6541(b), the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[8] Specifically, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act, [9] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices; 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.

When the Commission approved the original proposal that instituted limit order protection for Nasdaq securities, it stated:

> The Commission believes that the rule change [which instituted NASD IM–2110–2] will enhance investor confidence by improving the quality of executions for customers. By giving a customer's limit order priority over the market maker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers.
>
> The NASD's proposal will also improve the price discovery process in NASDAQ securities. Limit orders aid price discovery by adding liquidity to the market and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution at a price between the spread. The new rule will encourage dealers to execute customer limit orders in a timely fashion so that they may resume their proprietary trading activities. The practice of delaying executions until the inside price reaches the customer's limit order also impedes price discovery by shielding those orders from the rest of the investing public. More expeditious handling of customer limit orders * * * will provide investors with a more accurate indication of the buy and sell interest at a given moment.[10]

The Commission cited this provision in approving the OTCBB Manning pilot in February 2001.[11] In the February 2001 approval order, the Commission also stated its view that a Manning pilot on the OTCBB was an appropriate first step in bringing limit order protection to the OTCBB, and that the pilot program would afford Nasdaq the opportunity to study the application of the rule and to consider further refinements.[12]

The Commission believes that it is appropriate at this time to approve limit order protection for all OTCBB securities on a permanent basis. In making this determination, the Commission notes that Nasdaq did not observe any material impact on market quality for the OTCBB securities subject to the pilot.[13] The rationale for approving limit order protection for Nasdaq securities and the pilot for OTCBB securities applies equally to approving the OTCBB Manning rule on a permanent basis: Limit order protection ensures that a market maker considers the limit orders of customers when executing its own orders and thus prevents the isolation of customer limit orders that might otherwise occur if a market maker were freely able to trade ahead of them. The Commission believes that the liquidity and transparency of the market in OTCBB securities should improve as a result of applying Manning protection to them on a permanent basis.

Under Section 19(b)(2) of the Act,[14] the Commission may not approve a proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposal, as revised by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The revisions to the proposed rule text made by Amendment No. 1 are technical in nature and consistent with Nasdaq's proposal to extend Manning protection to all OTCBB securities on a permanent basis. Accordingly, the Commission believes it is appropriate to approve the amended proposal at this time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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 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–2002–153 and should be submitted by January 14, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [15] that the proposed rule change (SR–NASD–2002–153), as amended, is approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32320 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

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

[9] 15 U.S.C. 78o(b)(6).

[10] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[11] *See supra* note 6, 66 FR at 10543.

[12] *See id.*

[13] *See supra* note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47012; File No. SR–NASD–2002–269]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Maximum Execution Fees and Credits for SuperMontage Transactions in Low-Priced Securities

December 26, 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 November 22, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(a)(ii) of the Act [3] and Rule 19b–

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

[2] 17 CFR 240.19b–4.

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